

**FIRE DISTRICTS ASSOCIATION OF CALIFORNIA
EMPLOYMENT BENEFITS AUTHORITY
POLICIES AND PROCEDURES**

I. PUBLIC RECORDS POLICY

A. Purpose and Scope of Policy.

This policy sets forth the guidelines for requesting access to inspect and/or obtain copies of public records maintained by the Authority.

Generally, the Public Records Act (the "Act") found at Government Code Section 6250 et seq., requires that the records the Authority generates in its work be open to public inspection and that copies be made at cost and on request. The Act is based upon state policy that access to government information is a fundamental and necessary right of every person in this state. The Act provides that certain information must be withheld from public inspection in order to protect personal privacy, allow local governments to negotiate effectively, and to obtain confidential legal advice. Accordingly, the Act specifies exemptions to the duty of the Authority to make public records available for inspection and copying by the public.

This policy recognizes that determinations regarding disclosure and nondisclosure of Authority records must be made with care since both failure to disclose public records in accordance with the Act and improper disclosure of records in violation of constitutional privacy rights may both be a basis for Authority liability. The purpose of this policy is to provide guidelines to Authority staff to determine whether the disclosure or nondisclosure of requested Authority records is appropriate under the Act and the proper procedure for responding to such requests from the public. In general, compliance with the Act requires the Authority to balance the public's right to know how its local government is operating and the protection of individual privacy rights.

B. Definition of "Public Record".

An Authority public record consists of any writing containing information relating to the conduct of the public's business, whether handwritten, printed, photocopied, photographed, electronic mail, facsimile, video, film, audio tapes, and any other form of communication or representation, prepared, owned, used or retained by the Authority in the ordinary course of its business.

The Act only requires disclosure of existing, reasonably identifiable records. The Authority does not have a duty under the Act to comply with requests that prospectively seek records that do not yet exist, or to compile new information, data, or create new reports or records in order to respond to information requests from members of the public.

C. Duties of Authority in Responding to Requests for Public Records.

1. Determination of Records Available for Inspection.

Authority records which must be disclosed under the Act are available for public inspection by members of the public at any time during business hours. Any request for public records to the Authority must be made in writing and submitted in person, or by mail or e-mail. Persons interested in reviewing or obtaining copies of Authority records are encouraged to make a file review appointment in advance. Appointments are not mandatory, but they will help the Authority facilitate production of the records requested. At the time of the appointment those records which the Authority has identified as responsive to the request will be made available for review to the requester in the file review area of the office. Since it is a crime to steal, remove, destroy, mutilate, deface, alter, or falsify Authority records, in some cases Authority staff may be assigned to observe the file review process in order to protect the integrity of Authority records.

The Act provides that the Authority may, upon a request for inspection of Authority records, investigate whether the request, in whole or in part, seeks copies of discloseable public records in possession of the Authority that are exempt from public disclosure pursuant to the terms of the Act. The Act provides the Authority a period of ten (10) calendar days from the date of the written request to inspect the records to make this determination. The Authority will respond in writing within ten (10) calendar days of receiving the request whether and to what extent it will provide access to the records requested and, if not, the exemptions under the Act which preclude the Authority from disclosing the requested records.

If a portion of an Authority record is exempt from disclosure under the Act, the Authority will “redact” or edit the document to protect the confidential material, while making any reasonably segregable portion of the document which is not exempt from disclosure available to the requester.

(a) Assistance to Requesters. The Authority will assist members of the public in obtaining access to Authority records by helping requesters identify records which are responsive to their request, including providing the location in which records are stored, or providing suggestions such as how to narrow a request to make it possible for the Authority to meet the request without undue burden on the requester. As an alternative to such assistance, the Authority may provide an index of its records to the requester to assist the requester.

2. Responding to Request for Copies of Authority Records.

The Authority will provide copies of Authority records on request and will charge its direct costs of duplication, which costs do not include staff time to locate or retrieve records or to make copies.

A request for copies of Authority records will be satisfied promptly, but in some cases the Authority may reserve its rights to determine the extent to which it is in possession of records responsive to the request and the extent to which such records may be exempt from disclosure to the public under the Act. The Authority will make this determination within ten (10) calendar days of receiving a written request for copies of Authority records.

In unusual circumstances the Authority may, by written notice to the requester, extend its time to respond to the request and specify any applicable exemptions from disclosure for up to fourteen (14) additional calendar days under the following circumstances:

(a) The need to search for and collect the requested records from facilities separate from the Authority's office;

(b) The need to search for, collect and examine a voluminous amount of separate and distinct records that are demanded in a single request;

(c) The need for consultation with Authority Legal Counsel as to whether the Act permits disclosure of the records requested.

Such written notice will set forth the reasons for the extension and the date on which the determination is expected to be finalized and the date when those records which are determined to be discloseable will be made available.

If any Authority records are found to be exempt from disclosure, the Authority will notify the requester in writing within the timeframes specified herein of those requested records which are deemed to be exempt from disclosure, and the basis of such exemption. This notice shall contain the names and titles of those persons responsible for the denial.

In those cases involving requests for voluminous records, the Authority retains the option to send its records to a copy service for copying, rather than copying them in the Authority office. The Authority will require the requester to pay the copy service's charges to the Authority before receiving copies of the requested documents from the Authority. The Authority will also permit members of the public to arrange for a bonded copy service to come to the Authority office to make copies of requested documents on their behalf. The Authority encourages requesters to make advance arrangements with the Authority in retaining copy service companies to come to the Authority office to make copies on their behalf.

D. Providing Copies of Board Agenda Documents.

Copies of agendas and supporting materials for regular and special meetings of the Board distributed to a majority of the Board of Directors shall be made available to the public at the same time as such documents are made available to members of the Board of Directors. However, certain documents contained within the agenda supporting documentation that are confidential and privileged as a result of the attorney-client privilege, or other applicable privileges, will not be distributed to the public as those documents are exempt from disclosure under the Act. A limited quantity of agendas together with non-privileged supporting documentation will be copied in advance of each meeting and made available to the public in attendance at the meeting at no charge. Individuals requesting copies of the agenda and supporting documentation for any regular or special board meeting prior to the board meeting will be charged the then current copying charge. Copies of agendas and supporting documentation for Board meetings, upon payment of the applicable copying charge, will be available to the requester no earlier than seventy-two (72) hours before any regular meeting of the Board, and twenty-four (24) hours before any special meeting of the Board.

E. Copying Charges.

Individuals requesting copies of Authority documents that are not privileged or otherwise exempt under the Act will be charged at the then current copying charge as indicated in Appendix A—Fee for Copying of Public Documents. Said fees shall be paid to the Authority prior to the Authority's delivery of the requested records to the requester.

F. Authority Records Exempt from Disclosure Under the Act.

The Act provides that certain information must be withheld from public inspection in order to protect personal privacy, to allow the Authority to negotiate effectively with respect to labor negotiations and real estate negotiations, or to obtain confidential legal advice. Therefore, the Act specifies various categories of exempt records which the Authority is not obligated to make available to the public. The Act lists many such exemptions which may be applicable to a specific request for Authority records which are too numerous to specify in this policy but are listed at Government Code Section 6276.02 through 6276.48.

In addition to these specific exemptions in the Act, the Act also provides that the Authority shall not disclose any Authority record when the facts of the particular case demonstrate that the privacy interests served by not disclosing the record clearly outweigh the public interest served by disclosure of the record.

Examples of the exemptions commonly applicable to Authority records are as follows:

1. Preliminary drafts, notes, or inter-agency or intra-agency memos that are not retained by the Authority in the ordinary course of business.
2. Records pertaining to pending litigation involving the Authority or to claims filed against the Authority for monetary damages.
3. Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
4. Participant claim files and participant Personal Health Information ("PHI") is exempt from disclosure pursuant to the Federal Health Insurance Portability and Accountability Act ("HIPAA"). (See the FDAC EBA Policies and Procedures regarding compliance with the requirements of HIPAA.)
5. Any record which is privileged under any other law including attorney-client communications, attorney work-product, and patient-physician communications.
6. Additional privileged information includes the official information privilege which makes confidential information acquired in confidence by any Authority employee and/or Board member in the course of his or her duties performed on behalf of the Authority.
7. The deliberative process privilege which protects communications between agency decision makers before decisions are made to protect information the disclosure of which

could reveal the thought processes of government officials and discourage candid discussion within the Authority and thereby undermine its ability to perform its functions.

8. Real estate appraisals and engineering or feasibility estimates and evaluations relative to the acquisition of property, or to prospective public supply and construction contracts.

9. Security assessments that assess the Authority's vulnerability to terrorist attack or other criminal attacks intended to disrupt the Authority's operations and that is for distribution or consideration in a closed session.

10. Financial data filed with the Authority by a contractor, developer, or any other person which is required to establish that that person is qualified for the contract, license, permit, or entitlement being sought.

G. E-mail as a Public Record.

The Authority recognizes that e-mail generates correspondence and other documentation which may be recognized as official Authority records in need of protection and/or retention in accordance with the Act. The e-mail system is intended as a medium of communication, and should not be used for electronic storage or maintenance of documentation including, but not limited to, official Authority records.

Three types of e-mail messages constitute Authority records as follows:

1. E-mail between the Authority, its members, and/or the public created or received in connection with official Authority business;
2. E-mail that documents the formulation and implementation of policies and decisions; and
3. Messages that initiate, authorize or complete a transaction of official Authority business.

If an e-mail message including any attachments thereto falls into any of these three categories, such e-mails constitute official Authority records which should be printed as a hard copy and filed and retained in accordance with the Authority's records retention policies. Generally, the Authority employee or official who is the sender of the e-mail should be the person responsible for printing and filing it, but persons responsible for a particular program or project file shall be responsible for retaining all e-mail which constitutes Authority documents that are sent or received related to that program or project.

Any e-mail communication that does not fall within one of the three enumerated categories shall be deleted once they are no longer needed. Individual employees are responsible for deleting e-mails in their respective mailboxes which do **not** constitute Authority records as specified in this policy.

It is the responsibility of individual Authority employees and their department heads to determine if an e-mail is an official Authority record that must be retained in accordance with the

Authority's record retention policy. The Board Secretary will assist staff in making such a determination. Authority staff should keep in mind, however, that preliminary drafts, notes, or inter-agency or intra-agency memoranda in the form of e-mail that are not retained by the Authority in the ordinary course of Authority business are not considered to be official Authority records subject to disclosure. Employees are encouraged to delete e-mail documents that are not otherwise required to be kept by law or whose preservation is not necessary or convenient to the discharge of their duties or the conduct of Authority business.

Periodically the Authority receives requests for inspection of production of documents pursuant to the Act, as well as demand by subpoena or court order for such documents. In the event such a request or demand is made for e-mail, the employees having control over such e-mail, once they become aware of the request or demand, shall use their best efforts, by any reasonable means available, to temporarily preserve any e-mail that is in existence until it is determined whether such e-mail is subject to preservation, public inspection or disclosure. The Authority Administrator shall be contacted regarding any such e-mails within an Authority employee's control.