

## **Guidelines for Implementing the California Public Record Act**

### **1. DEFINITIONS**

- A. "District: means the San Joaquin Valley Unified Air Pollution Control District or any employee authorized to act on its behalf.
- B. "Person: includes any natural person, corporation, partnership, limited liability company, firm, or association.
- C. "Public Record" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by the District, regardless of physical form or characteristics.
- D. "Writing" means handwriting, typewriting, printing, photostatting, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and any record thereby created, regardless of the manner in which the record has been stored.
- E. "Production Data" means information disclosing the actual quantity of material used to produce an article having commercial value, as well as information disclosing the actual quantity produced.
- F. "Emission Data" means measured or calculated concentrations or weights of air contaminants emitted into the ambient air. Data used to calculate emission data are not emission data.

### **2. PURPOSE**

The purpose of these guidelines is to implement the California Public Records Act, commencing at Section 6250 of the Government Code, and other applicable statutes and case law, by setting forth the procedures to be followed when making records available to the public.

### **3. EXAMPLES OF RECORDS AVAILABLE TO THE PUBLIC**

- A. All air or other pollution monitoring data, including data compiled from stationary sources. [Gov. Code Sec. 6254.7(b)].
- B. All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution, which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or any other state or local agency or district requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, machine, equipment, or other contrivance, unless the information is exempt from disclosure by express provision of law. [Gov Code Secs. 6254.7(a) and (d)].
- C. All air pollution monitoring data, including those emission data which constitute trade secrets as defined in Gov. Code Sec. 6254.7(d). Data used to calculate emission data are not emission data for the purposes of these guidelines, and data which constitute trade secrets and that are used to calculate emission data are not public records and are not available to the public. [Gov. Code Sec. 6254.7(e)].

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- D. Permits to operate, permits to construct, permit application forms, supplemental applications to forms, potential to emit reports, risk assessments, site inspection reports, source test reports, asbestos records, emission reduction credit certificates, and notices of violation. (The inspector's report and other investigatory material may be withheld until a settlement agreement is reached or the case is concluded.)
- E. Data used to calculate the costs of obtaining emission offsets are not public records. If the District issues a permit to construct to an applicant who is required to obtain offsets pursuant to District rules and regulations, the following data are public records: the year the offset transaction occurred; the amount of the offsets purchased by pollutant, and the cost of the offsets purchased by pollutant. If the application is denied, the data shall not be a public record. [Gov. Code Sec. 6254.7(f)].
- F. District employment contracts. [Gov Code Sec. 6254.8].

### 4. RECORDS EXEMPT FROM DISCLOSURE

- A. Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the District in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure. [Gov. Code Sec. 6254(a)].
- B. Records pertaining to pending litigation to which the District is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until the pending litigation or claim have finally adjudicated or otherwise settled. [Gov. Code Sec. 6254(b)].
- C. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. [Gov. Code Sec. 6254( c )].
- D. Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person. [Gov Code Sec. 6254(e)].
- E. Records of complaints to, or, investigations conducted by, or for, the District, for law enforcement or permit purposes, or any analysis or conclusions of an investigating officer. Notwithstanding the above, the time, substance, and location of all complaints or requests for assistance received by the District and the time and nature of the response thereto, including, to the extent the information regarding the incident is recorded, the time, date and location of occurrence, the time and date of the report, the factual circumstances surrounding the incident, and the name, age, and current address of the victim of the incident, are public records unless: 1) the disclosure of such information would endanger the safety of a person involved in an investigation; 2) would endanger the successful completion of the investigation or a related investigation [Gov. Code Sec. 6254(f); 3) would be an unwarranted invasion of privacy; 4) might identify confidential sources; or 5) would reveal information supplied in confidence. This exemption is inapplicable to requests made by a District attorney. [Gov. Code Sec. 6262].
- F. Test questions, scoring keys, and other examination data related to examination for employment or academic examination. .[Gov. Code Sec. 6254(g)].
- G. The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreements obtained. However, the law of eminent domain shall not be affected by this provision. [Gov Code Sec.6254(h)].

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- H. Library circulation records kept for the purpose of identifying the borrower of items available in the library, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. [Gov. Code Sec. 6254(j)].
- I. Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. [Gov. Code Sec. 6254(k)].
- J. Confidential communications between the District and its attorneys. [Ev. Code Sec. 954].
- K. Records of documents covered by the attorney work product privilege, or any other judicially recognized privilege, including but not limited to, the deliberative process privilege.
- L. Records which relate to Grand Jury testimony.
- M. Records which are privileged under Section 1040 of the Evidence Code which provides:
  - (i) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public to the time the claim or privilege is made;
  - (ii) A public entity has a privilege to refuse to disclose information and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so; and;
    - a. Disclosure is forbidden by an act of the Congress of the United States or a Statute of this state; or;
    - b. Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.
- N. Trade secrets, with the exception of emission data, which may include, but are not limited to, a formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. [Gov. Code Sec. 6254.7(d)].
- O. Computer software, which includes computer mapping systems, computer programs, and computer graphics systems, developed by a state or local agency including the District. [Gov. Code Sec. 6254.9(a) and (b)].
- P. Records that relate to volatile organic compounds and chemical substances information received or compiled by an air pollution control officer pursuant to Health and Safety Code Section 42303.2. [Gov.. Code Sec.6254.11].
- Q. Records in which the District determines that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. [Gov. Code Sec. 6255]. The cost and burden to the District may be relevant factors in determining the public interest in not making the record public.

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- R. A memorandum submitted to a state body or the District's Governing Board its legal counsel pursuant to subdivision (q) of Government Code Section 11126 or 54956.9 until the pending litigation has been fully adjudicated or otherwise settled. The memorandum shall be protected by the attorney work product privilege until the pending litigation has been finally adjudicated or otherwise settled. [Gov. Code Sec. 6254.25].

### 5. PROCEDURE

#### A. Requesting Copies of Public Records

- (i) All requests for copies of public records must be made in writing. A Public Record Request Form is currently available on the District's web page at [www.valleyair.org](http://www.valleyair.org). Requests may be submitted by facsimile to the District at (559) 230-6061, or by mail to Public Record Request, 1990 East Gettysburg Avenue, Fresno, CA 93726-0244, or by email to the [public.records.coordinator@valleyair.org](mailto:public.records.coordinator@valleyair.org). All requests for copies of records should describe an identifiable record. [Gov. Code Sec. 6253]. Reasonable restrictions may be imposed upon general requests for voluminous classes of documents. Copies will be provided unless 1) disclosure would infringe a copyright or trade secret, 2) the records are exempt from disclosure by express provisions of the law, or 3) the volume of requested records would be impracticable for the District to copy in its day-to-day operations. However, in this case the District will make the records available for copying, by the requesting party, upon request. The District shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the District to create copies for its own use or for provision to other agencies. Records held by the District in electronic format may be requested in accordance with provisions specified in Gov. Code Sec. 6253.9.

#### B. Assistance Provided to Requestors

When a member of the public requests to inspect a public record or obtain a copy of a public record, the District, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do the following, to the extent reasonable under the circumstances:

- (i) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- (ii) Describe the information technology and physical location in which the records exist.
- (iii) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. [Gov. Code Sec. 6253.1]

#### C. Response Time

- (i) The District shall determine within 10 days from receipt of the public records request if the request, in whole or in part, seeks copies of disclosable public records in the possession of the District. In unusual circumstances, additional time up to 14 days may be warranted. The District shall promptly notify the requestor of its determination and the reasons therefore. [Gov. Code Sec. 6253(c)] Such notification will include a public records reference number, which should be used in any further correspondence relating to the request and the estimated time to complete the request.

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### **D. Exempt Records and Trade Secrets**

Records that are exempt from the Public Records Act will normally not be released. Records claimed by a facility or entity to be trade secrets or otherwise exempt from disclosure will not be released unless the District determines that they are clearly public records. Only information claimed to be a trade secret at the time of submittal to the District pursuant to District Rule 1030 and District Policy number ADM 1030-1 may be treated as trade secret. In the event that a question arises as to whether a particular record is exempt as trade secret or otherwise, the status of the document with the District Department responsible for maintaining that class of document must always be confirmed prior to releasing it as a public record.

### **E. Subpoenas**

The public Records Act is not applicable in situations where subpoenas have been issued to the District for document production. Any such subpoenas shall be referred to District's Legal Department, unless otherwise directed by that office.

### **F. Requests for Access to Inspect Specific Files**

It is the policy of the District that all records for public inspection shall be made available with the least possible delay.

Public records are open to inspection at all times during the office hours of the District, and every person has a right to inspect any public record as defined herein. To permit sufficient time for the District to compile the records for review, an appointment to view the records should be made by the requestor. A request to inspect public records in the custody of the District should be in writing and should describe the records with sufficient specificity to enable the District to identify the information sought.

Records that are exempt from the Public Records Act and records claimed to contain trade secrets will be handled in the manner described in Subsection D. If a delay occurs, the requestor will be notified of the reasons and offered the option of either viewing that portion of the record that is available, or waiting until the complete record is available.

A designated representative, will be available to assist the requestor during the inspection. The requestor will be provided with the records and a work space. The designated representative will ensure that no records are removed or altered. If the requestor asks for photocopies of certain records, the District will arrange for the copies to be made and mailed within 10 business days. The requirements set forth in Section VI regarding fees will be applicable.

## **6. FEES**

- A. The Public Records Act requires "payment of fees covering direct costs of duplication, or a statutory fee, if applicable." [Gov. Code Sec. 6253(b)]. In addition, when records are requested in electronic format, the requestor shall bear the cost of producing a copy of the record, including the cost to construct the record and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies: (1) the District would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals, or (2) the request would require data compilation, extraction, or programming to produce the record. [Gov. Code Sec. 6253.9(b)]

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The District will provide an invoice for charges due prior to release of the copied records. Note: If the requesting party is a Permitted Source of the District, upon request, the District will release the information with the invoice. Otherwise, requested information will be released only upon receipt of payment.

- B. The District's Finance Division shall set the rate to be charged for the direct cost of duplication. There is a charge of 10 cents per page for all pages photocopied. Paper copies generated from computer database programs, diskette or microfiche are 10 cents per page. Fees for other services and supplies associated with public record requests are as follows:

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|---------------------------------------|--|
| a. Copied CD's or copied Diskettes    | \$4.50                                     |
| b. Delivery by Fax (Maximum 30 Pages) | \$4.50                                     |
| c. Mailing Costs                      | Actual Postage plus \$4.50 Handling Charge |

Fees for programming and computer services, copying of audio and video tapes, however, will be based on the actual cost of the staff performing the work. The level of staff needed to fulfill the request for electronic information could vary depending on the intricacies and complexity of the request. For significant efforts, the requestor may be required to pay a portion or all of these costs in advance of commencing the work.

### 7. RESPONSIBILITIES

A. Public Records Coordinator

The Executive Officer will designate the office that will have primary responsibility for coordinating the District's compliance with the California Public Records Act. That responsibility includes:

- (i) Receiving, logging, and tracking all requests for public records;
- (ii) Determining the possible location of the records, and routing copies of requests to the appropriate division to obtain copies of records requested and following up to meet return date deadlines;
- (iii) Assisting the public in understanding what information is available, and what must be done to obtain access to, or copies of, public records;
- (iv) Ensuring that the District Counsel's Office reviews any material subject to confidentiality of data or trade secret status and provides their comments as to whether the requested records may be released;
- (v) Following the procedures above dealing with trade secrets if a record has been identified as a trade secret or appears to be confidential;
- (vi) Providing the necessary notices and public records within the appropriate period of time as outlined in these guidelines;
- (vii) Making sure that all originals of records are returned to the appropriate organization unit as soon as possible;
- (viii) Ensuring that requests from the media are coordinated with the Program Assessment and Public Education Division;

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### **B. Organizational Units in Custody of Records**

The District's organizational units are custodians of their own records created as a result of their activities, whether or not they are storing the records. The custodial units will be responsible for retrieving, gathering, and copying of the records requested of them. These records are to be reviewed by the organizational unit manager for information that is a trade secret or otherwise exempt from disclosure. Such information, if reasonably segregable, shall be redacted under the guidance of the District's Counsel's Office.

The custodial unit must determine if they are, or are not, in possession of the records requested and notify the Public Records Coordinator so they may comply with the response time specified in Section 5.B. of these guidelines [Gov. Code Sec. 6253( c )]. If there are records in response to the request, the properly reviewed records will be promptly provided to the Public Records Coordinator.

### **C. District Counsel**

Requests for records pertaining to documents that may not be released due to pending litigation, pending settlement or conclusion of Notices of Violation, or pending settlement or conclusion of civil cases, will be provided to the District Legal Division and will be responsible for the timely identification and review of those records and will determine which records may be released.

The District Counsel's Office is also responsible for providing legal guidance in determining which records may be released under the Public Records Act and with those documents that are alleged to be trade secrets or exempt from the Public Records Act. The Public Records Coordinator will immediately provide the District Counsel's Office with all correspondence relating to the justification of exempt or trade secret status.