

**SANTA BARBARA COUNTY**  
**AIR POLLUTION CONTROL DISTRICT**  
**POLICIES AND PROCEDURES**

Policy No.	<u>1100.044.00</u> Div Pol Yr	Draft _____
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Date:	<u>August 15, 2000</u>	
Topic:	<u>Public Requests to View District Files</u>	
Distribution:	<u>APCD Staff</u>	

The APCD often receives requests to review public records retained by the agency or to obtain copies of those records. Pursuant to the California Public Records Act (“PRA,” Government Code Sec. 6250 *et seq.*), it is the APCD’s policy to provide access to such public records and to make copies of public records available upon request. The procedures below outline the necessary steps to be followed by the public and APCD staff to comply with the PRA in providing for and obtaining access to APCD-held public records as well as requesting and receiving copies of those records.

As used in this policy, the phrase *public records* is as defined in Government Code section 6252(e) and includes any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by the APCD regardless of physical form or characteristics.

**Procedures: Requests for Access to Review Public Records**

1. Public records are open to inspection during APCD office hours, 8:00 a.m. - 12:00 p.m. and 1:00 p.m. - 5:00 p.m., Monday through Friday, except for state and APCD holidays. However, the inspection of public records is subject to a rule of reason as to time and duration and must be consistent with the efficient functioning of our offices. The APCD requests any person who wishes to inspect public records to telephone the Office in advance and make an appointment to inspect the records. It is the policy of the APCD that records not exempt from disclosure by state law will be open for public inspection with the least possible delay and expense to the requesting party. Records subject to exemption may nevertheless be made available for inspection if waiving the exemption will serve the public interest, as determined by the Control Officer on a case by case basis.
2. When a request to inspect records is made, the Division Assistant shall coordinate with the requestor to arrange an appointment to view the public records requested. The Division Assistant shall greet the requestor at the front desk and provide a visitor’s tag that indicates the individual’s name and company/agency affiliation. The Division Assistant shall locate the requestor in a public area of the agency’s office for the public records review, and supply the requested public records.

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Policies and Procedures Memoranda are intended to provide agency staff, applicants and the public guidance relative to standardized District procedures. These policies and procedures shall not be interpreted in conflict with District Rules and Regulations or administrative policies, and may be modified or updated periodically without advance notice.

3. The Division Assistant shall inform the requestor upon arrival at the APCD that files containing public records are not to be dissembled in any way and that no files or other records-containing materials are to leave the APCD premises. Additionally, the Division Assistant shall advise the requestor that he/she must stay in the designated area unless escorted by APCD personnel, or visiting the restroom. If the requestor wishes to meet with APCD personnel, he/she shall make arrangements through the APCD Receptionist at the front desk. Other than trips to the restroom, visitors shall not walk the floor unescorted.
4. If the requestor requires copies of public records that are being reviewed, the requestor is to mark each page to be copied with a colored post-it note and return the file or files intact to the Division Assistant. Copies are to be provided at a charge of \$.20 per page and, pursuant to the PRA, payment shall be collected before the copies are released (see APCD P&P 1100.033). A copy of this Policy shall be made available free of charge upon request to any person requesting copies of APCD's records.

#### **Procedures: Written Requests for Copies of Public Records**

5. Any written request to inspect a public record shall be submitted in writing to the attention of the Division Assistant. APCD staff shall stamp the "time of receipt" on each written request, indicating when it was received by the agency. To invoke the timeline under the PRA, the written request must state that public records are being requested pursuant to the PRA. The written request need not be in any particular form, but should describe the requested records with sufficient specificity to enable APCD staff to identify and locate the information sought. Such specificity should include, if possible, permit numbers, names, addresses, and other specific technical or administrative data, to allow APCD staff to locate the information with minimum disruption of business. Failure to provide specifics regarding the public record sought may delay or make it impossible for APCD staff to produce the public record. The written request shall also contain an address and phone number at which the requestor may be reached.
6. E-mail requests for public records are acceptable so long as they note that the request is made pursuant to the PRA and they meet the information requirements noted in #5 above. E-mail requests are to be sent to ***APCDPublicRecordsActRequest@sbcapcd.org***. E-mail requests sent to addresses other than this shall be returned with a message requesting proper addressing. To invoke the timeline under the PRA, e-mail requests sent to the APCD during non-business hours (e.g., after close of business, weekends, holidays) will be assumed to have been received the next available business day.
7. The Division Assistant shall coordinate the APCD's response to the PRA request. In the Division Assistant's absence, the General Source Division Office Technician or other designated staff shall provide back-up.
8. The PRA requires that, within 10 days of receipt of the request, the APCD shall determine whether the request seeks disclosable public records that are in the agency's possession and shall promptly notify the requestor of its determination and the reasons therefor. During this 10-day period, the Division Assistant will coordinate with other agency staff as necessary to ascertain the availability and disclosability of the records that have been requested. On or prior to the 10<sup>th</sup> day, the Division Assistant shall issue a response (Attachment 1) to the requestor advising them of the APCD's determination, how the requested copies may be obtained, the cost of providing the copies, and which (if any) of the records are not subject to disclosure (see below, **PUBLIC RECORDS EXEMPT FROM DISCLOSURE**). The Division Assistant may coordinate with the requestor by telephone or other means to arrange the transfer of the copied records by mail or pick-up at the APCD front desk.

9. In "unusual circumstances," the time limit prescribed in the PRA may be extended by written notice by the Control Officer or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. (Reference: Sec. 6253(c).) No notice shall specify a date that would result in an extension for more than 14 days. As used in the PRA, "unusual circumstances" is defined as the following, but only to the extent reasonably necessary to the proper processing of the particular request:
  - a. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
  - b. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
  - c. The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
10. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial. (Reference: Sec. 6253(d).)
11. The Division Assistant will assemble the copied records that respond to the request, and will convey these records to the requestor as arranged per paragraph 8 above. Copies are to be provided at a charge of \$.20 per page and, pursuant to the PRA, payment shall be collected before the copies are released (see APCD P&P 1100.033). Depending on the level of detail associated with the request for copies, the Division Assistant may seek assistance in assembling copied records from appropriate technical and/or administrative staff. A copy of this Policy shall be made available free of charge upon request to any person requesting copies of APCD's records.

### **Other Considerations**

#### **SUBPOENAS DELIVERED TO THE APCD**

If a subpoena is served at the front desk with the directive to access public records held by the APCD, the Receptionist shall contact the Executive Secretary immediately, who will bring the subpoena to the attention of the Director or, in his absence, his designee.

#### **CONFIDENTIAL Complainants & INFORMANTS**

The identity of confidential complainants or informants may be protected pursuant to Government Code section 6255. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4<sup>th</sup> 1008.) Such protection should be limited to where the complainant or informant requests such protection. Confidential complaints may not be the basis of a notice of violation for nuisance because such a case requires complainants to be available to testify in order to prove the nuisance.

#### **CONFIDENTIAL MATERIALS**

Some requests for public records involve materials that have been submitted under the APCD's confidentiality provisions. Please refer to P&P 6100.20 for guidance regarding handling and disclosure of materials confidentially held by the APCD. In the case of a request for confidential information, the appropriate Division Manager and County Counsel should be contacted for review of the request.

#### **PUBLIC RECORDS EXEMPT FROM DISCLOSURE**

In balancing the public's right to access public records with the recognized right to privacy and the need of public agencies to perform their duties, the Legislature has established certain categories of records that may be exempt from public disclosure.

APCD is not required to produce records that are:

- a. Preliminary drafts, notes, or inter-agency or intra-agency memoranda which are not retained by the APCD in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure. **Note:** e-mails sent and received by APCD normally will fall into this category and are not subject to PRA requests because E-mails are not kept in the ordinary course of business. E-mails that are kept in the ordinary course of business (normally indicated by printing and retention of the e-mail), however, are public records and must be produced when requested unless otherwise exempt from disclosure.
- b. Records pertaining to pending litigation to which the APCD is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) until such litigation or claim has been finally adjudicated or otherwise settled;
- c. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
- 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;
- e. Records of complaints to or investigations conducted by the APCD for law enforcement or licensing purposes. **Note:** the statutory exception for "law enforcement" applies only to criminal law enforcement actions and, therefore, excludes any case in the Mutual Settlement program. Records pertaining to civil law enforcement may be protected, as appropriate, pursuant to Government Code section 6255. See below.
- f. Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;
- g. Records of which the disclosure is exempt or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

The APCD also possesses the discretion to claim an exemption from public disclosure for records which do not qualify for a specific exemption under the PRA but as to which it determines that the public interest served by not making the record public clearly outweighs the public interest served by disclosure, pursuant to Government Code Section 6255. Except as required by law, the APCD does not allow public access to 'trade secrets' as defined in Government Code Section 6254.7(d) and Evidence Code 1060. 'Trade secrets' do not include emissions data since all emissions data and air pollution monitoring data are public records. (See Government Code section 6254.7.) However, the APCD's determination to disclose a record, which may otherwise be exempt from disclosure, does not constitute a waiver with respect to any other records.

If any question exists as to the disclosability of public records, the Division Assistant and the responsible Division Manager should consult County Counsel for further guidance. As stated in the PRA (Sec. 6255), *the agency must justify withholding any records by demonstrating that the record in question is exempt from disclosure or 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.*

1-155(b)

#### **AIR POLLUTION INFORMATION GENERALLY NOT EXEMPT**

All air pollution emission data including emission data which constitute trade secrets, as defined in the PRA are also public records that are subject to disclosure. Data used to calculate emission data are not

emission data for the purposes of the PRA and data that constitute trade secrets and that are used to calculate emission data are not public records.

Data used to calculate the costs of obtaining emissions offsets are not public records. However, at the time APCD issues an Authority to Construct permit to an applicant who is required to obtain offsets pursuant to APCD rules and regulations, data obtained from the applicant consisting of: a) the year the offset transaction occurred; b) the amount of offsets purchased, by pollutant; and, c) the total cost, by pollutant, of the offsets purchased, are public records. If an application is denied, the data shall not be public records. (Ref. Section 6254.7(f).)

All air monitoring data are public records.

The PRA (Sec. 6254.11) does not require the disclosure of volatile organic compound information obtained by APCD under H&SC 42303.2, which allows the Control Officer to seek customer lists, chemical types and quantities of VOCs provided by in-state and out-of-state suppliers. If a PRA request is received by the APCD that relates to this area of law, the Division Assistant shall advise the appropriate Division Manager and Counsel, who will address the request. *Caution: Pursuant to Health and Safety Code section 42303.2(c)&(d), any APCD officer, employee or APCD contractor who knowingly and willfully discloses such information to a person not entitled to receive it is guilty of a misdemeanor and subject to a fine.*

## ATTACHMENT 1

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(Letterhead)

<date>

<name>

<address>

<city, state, zip>

**RE: Your Public Records Act Request of <date>**

Dear <name>:

I am responding to your <date> Public Records Act request to view public records retained by the Santa Barbara County Air Pollution Control District, or to obtain copies of such files. The records you have requested to view or have copied are:

\_\_\_ Available. Please contact me at 805/961-8895 to arrange to view the files or receive the copies you have requested. The copied materials you have requested will cost <\$x.xx>, which must be paid prior to receipt of copies.

\_\_\_ Partially available. The Public Records Act states that certain records retained by public agencies are not disclosable. Your request to view files or receive copies of files includes materials covered by this provision of the Public Records Act. Please contact me at 805/961-8895 to arrange to view the files or receive copies of the materials that are disclosable pursuant to the Public Records Act, and to learn which materials are not disclosable. The copied materials you have requested which are available pursuant to the Public Records Act will cost <\$xx.xx>, which must be paid prior to receipt of copies.

\_\_\_ Not available. The APCD does not have the public records you have requested.

\_\_\_ Not disclosable pursuant to the Public Records Act (sec. 6254 et seq.). The Act limits the availability of certain records retained by public agencies. After consideration of your request, it is the determination of the APCD that the records you have requested access to or copies of constitute records that are not disclosable under the Public Records Act. The person making this determination is <name of APCD employee>.

\_\_\_ Your Public Records Act request does not contain sufficient detail to allow us to determine which additional public records you are seeking. To allow us to assist you in your search, please provide additional detail regarding:

*<describe what additional information is needed for APCD to process the request.>*

To the greatest possible extent, please include permit numbers, company and/or individual names, street addresses, names, descriptions and dates of correspondence, reports or submittals, and similar information so that we may timely respond to your request.

Sincerely,

Paula Iorio  
Division Assistant

(or)

Sharon Krummerich  
Office Technician

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