

Marin Emergency Radio Authority

Administrative Policy – Public Records

The California Public Records Act, Government Code sections 6250 through 6270 (the “Act”) provides that the public has a right to inspect and obtain a copy of most of the information retained by public agencies in the course of doing business. Even though individuals have a right to privacy, the Legislature has declared that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state.

As defined by the Act, public records are any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency. Writing is further defined to include any handwritten or typewritten document, photographs, pictures, drawings, audio or video recording, computer data, electronic mail or facsimile.

The Marin Emergency Radio Authority (“MERA”) maintains many public records. Unless there is a specific exemption listed in the Act or in another statute (see discussion below), most records maintained by MERA will be public records. In those cases where portions of a record are public and other portions are exempt from disclosure, staff will need to redact or remove the information that is exempt before disclosing the remainder of the record.

WHAT CONSTITUTES A REQUEST FOR A PUBLIC RECORD?

Any member of the public, whether a Marin County resident or not, may request to view or purchase a copy of a public record. The requestor does not have to give their name or other identifying information such as address or telephone number, does not have to put their request in writing and does not have to explain why they want the record. A request may be made over the telephone, in person, in writing, by facsimile or electronic mail. A requestor must identify an actual public record, requests that are too vague cannot be fulfilled. Staff is required by statute to assist the requestor in identifying the desired public records. Note that the Act does not require MERA to create records that do not exist or that it does not keep (e.g., a written summary of a document or a list of expenditures or events). Requestors have a right only to information that is on records in the form MERA keeps or uses it. If a person makes a request for a record that does not exist, MERA staff should nevertheless attempt to assist the requestor in identifying existing records that contain the information being sought where possible.

PROCEDURE FOR COMPLYING WITH A PUBLIC RECORDS ACT REQUEST

Request to View Records: Public records should be available for viewing during normal business hours. If records need to be reviewed for exempt material or need to be redacted, staff may ask the requestor to make an appointment to view the records. The appointment date should be as soon as possible following the request.

Request for Copies of Records: MERA staff has ten (10) calendar days to determine whether to grant the request. This deadline will fall on the next business day if the 10th calendar day falls on a weekend or holiday. Note that this is not the time period for complying with the request, rather it's the time period for responding to the requestor with a **written** determination as to whether records responsive have been located and what, if any, information from those records is exempt from disclosure. If any information is exempt from disclosure and will be redacted or withheld from the requestor, or if the request will be denied, the notification letter must be signed with the name and title of the person responsible for the denial. If the request is being granted, the determination letter should include a request for pre-payment of the applicable fees and a statement that the records will be made available a certain number of days after receipt of payment. The cost for copying the records is the direct cost of duplication or a statutory fee, if applicable, and does not include staff time to research, retrieve, review or compile the records. If an outside duplication firm is employed to make the requested copies, the cost charged to MERA may be passed along to the requestor. MERA has determined that the direct cost of duplication for normal sized photocopies is fifteen cents (15¢) per page. A common example of a statutory fee is the ten cents (10¢) per page charge for copies of campaign and economic disclosure statements.

In four statutorily defined "unusual circumstances," MERA may take up to an additional fourteen (14) calendar days to make a determination on the request. The four unusual circumstances are the following:

- The need to search for and collect records from an off-site location.
- The need to search for, collect and examine a voluminous amount of records.
- The need for consultation with another agency having an interest in the request or among two or more components of the agency receiving the request.
- The need to compile data, write a computer program or construct a computer report to extract data.

If it becomes necessary to invoke one or more of the above listed reasons for taking additional time in which to make a determination, written notification must be given to the requestor by the 10th day following their request. This written notification must state the reason for the delay and the date on which a final determination will be provided to the requestor.

EXEMPT RECORDS

Section 6254 of the Act details records that are exempt from disclosure. The following types of records are the most frequently requested documents that are exempt and therefore are not available to the public:

- Pending litigation matters;
- Personnel or medical records;
- Attorney/client privileged records;
- Preliminary drafts or notes if they are not kept in the ordinary course of business;
- Real estate appraisals, engineering or feasibility estimates made for or by MERA relating to the acquisition of real property until such time as the property has been acquired;
- Social Security numbers; and
- Records relating to assessment of the agency's vulnerability to terrorist attacks or other criminal acts intended to disrupt the local agency's operations if prepared for or distributed in a closed session of the agency.

Request for records should first be checked against the exemptions in Section 6254 or discussed with the MERA General Counsel. Section 6255 of the Act contains an exception for records not specified in 6254 but where the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. The court will carefully scrutinize use of this provision, so it should be used only in extraordinary circumstances after consultation with MERA's General Counsel.

SUBPOENAS FOR RECORDS

This administrative policy does not apply to subpoenas for records.