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PUBLIC RECORDS ACT POLICY

The Port of South Whidbey is required by RCW 42.56.100 to adopt and enforce reasonable rules and regulations, consistent with the intent of the Washington State Public Records Act (PRA), referenced in RCW Chapter 42.56 and the Model Rules of WAC 44-14., and to provide access to public records, protect public records from damage and disorganization and to prevent excessive interference with other essential functions of the Port. The Port is also required to protect certain public records from disclosure subject to various legal exemptions.

This PRA Disclosure policy establishes the procedures the Port of South Whidbey will follow to provide for the fullest assistance to requestors including the most timely possible action on requests, while protecting public records from damage and preventing excessive interference with other essential agency functions (RCW 42.56.100).

The Port is required to respond to public records requests pursuant to Chapter 42.56 RCW. The Port is not required to respond to questions, do research, or to provide information that is not an identifiable public record.

Except where these guidelines are mandated by statute, the guidelines in this policy are discretionary and advisory only and shall not impose any affirmative duty on the Port. Failure to comply with any provision of these rules shall not result in any liability imposed upon the Port other than that required in The Act.

DEFINITIONS

1. "The Port of South Whidbey" and "The Port" includes any office, department, division, bureau, board, commission, or agency of the Port of South Whidbey. RCW 42.56.010(1).
2. "Public Record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the Port of South Whidbey regardless of physical form or characteristics excluding records that are not otherwise required to be retained and are held by volunteers who (a) do not serve in an administration capacity; (b) have not been appointed by the agency to an agency board, commission or internship; and (c) do not have a supervisory role or delegated agency authority. RCW 42.56.010(3). Electronic data, including email, that meet this definition shall be considered a public record. Records created or received by employees using non-Port owned devices only qualify as public record if the employee was acting within the scope of employment when the record was created or received, or when the record is subsequently used for a Port of South Whidbey purpose.
3. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. RCW 42.56.010(4).
4. "Identifiable record" means an identifiable record is one in existence at the time the records request is made and that Port staff can locate after an objectively reasonable search.

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5. “Exempt Record” includes records or portions of records that are specifically exempted or prohibited from disclosure by state or federal law, either directly in RCW 42.56 or other statutes. Exemption from disclosure of a portion of a record does not automatically exempt the remainder of the record from disclosure. Exempt portions of records may be subject to redaction.

RESPONSIBILITY

Public Records Officer: The Port of South Whidbey Public Records Officer is the Executive Director. Other Port staff members may also process public records requests as required.

Port Attorney: The Port Attorney’s Office shall provide legal advice to the Public Records Officer or designee on those occasions when such advice is sought. Additionally, the Port Attorney’s Office will provide a timely written response to a written request for explanation of a denial of the release of public information as provided in Section 18 of this policy.

Central Office: The Port of South Whidbey’s central office for requesting records is at 1804 Scott Road, suite 303, Freeland, WA 98249. The Port is a Special Purpose district governed by the provisions of RCW Chapter 53. The Port has facility offices located in various locations in the Port district. More information regarding the Port of South Whidbey’s facilities may be obtained through the Port’s website www.portofsouthwhidbey.com

PROCEDURE

1. How to Request Records:

General Records Requests - Any person requesting access to general public records or seeking assistance in making such a request can use our online public records form or could contact the Port Clerk located at:

Port Clerk/Public Records Officer
1804 Scott Rd, suite 303
Freeland, WA 98249
Phone: (360) 331-5494

email: support@portofsouthwhidbey.com
hours: 9:00 am to 4:30 pm
Monday – Friday (excluding holidays)
Fax: (360) 331-5414

2. Request Format: While there is no specific required format for a public records request, a requestor must provide the Port with reasonable notice that the request being made is for public records. When a request is contained in a larger document addressed to the Public Records Officer and not immediately recognized as a public records request, the requestor should point out the public records request by labeling the front page of the document as containing a public records request or otherwise calling the request to the attention of the Public Records Officer to facilitate timely response to the request.

The Port encourages all requests for public records be made in writing on a “Request for Public Records” form (Exhibit A), which is available at the Port Clerk’s Office and on the Port of South Whidbey website at www.portofsouthwhidbey.com. Requests may be submitted in person, orally, by mail, fax, or e-mail. Mail, e-mail, and faxes will be considered received on the date the form is stamped “received”, not on the date sent. Requests should include the following information:

- A. The requestors name, mailing address, and contact phone number, or other information necessary for the Port to respond to the request;
- B. The date of the request;
- C. The nature of the request, including a detailed description of the public record(s) adequate for the Port personnel to be able to locate the records;

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- D. A statement regarding whether the records are being requested for a commercial purpose (RCW 42.56.070 (8));
- E. Whether the requestor desires copies, or electronic copies, or to inspect the requested records.

Requests for public records made orally must be made during normal business hours. Requests for public records made orally must be confirmed by the Public Records Officer.

A variety of records are available on the Port's website at www.portofsouthwhidbey.com. Requestors are encouraged to view records available on the website prior to submitting a records request.

3. Response to Requests: The Port is charged by statute with adopting rules which provide how it will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the Port, provide fullest assistance to requestors, and provide the most timely possible action on public records requests.

Within five (5) business days of receiving a request, the Port will either (A) provide the record; (B) acknowledge that the request has been received and provide a reasonable time estimate it will need to respond to the request; (C) deny the request, (D) request clarification from the requestor and provide a reasonable time estimate it will need to respond to the request or (E) provide the Port's website address and a link to the specific record.

Additional time to respond may be based on the need to clarify the intent of the request, to locate and assemble the records, to redact confidential or exempt information, to prepare a withholding index, to notify third parties or agencies affected by the request and provide such parties/agencies with the opportunity to seek a court order preventing disclosure where appropriate, and/or to consult with the Port Attorney about whether the records are exempt from disclosure. The Public Records Officer should briefly explain the basis for the time estimated to respond. Should an extension of time be necessary to fulfill the request, the Public Records Officer will provide a revised estimate and explain the changed circumstances that make it necessary.

In order to accomplish the policy that requests be processed, allowing the most requests to be processed in the most efficient manner, requests will be categorized as "Immediate", "Routine", or "Complex" as set forth below. Complex requests will be processed separate from Immediate or Routine requests and will be processed with other Complex requests in the order such requests were received.

In the event the records requested are readily available, of a common nature and do not involve the interest of any other person, the Public Records Officer may authorize the Immediate inspection and/or copying of such record without the necessity of filing the request as provided for in Section 2 – Request Format.

The Public Records Officer or designee shall consider the following criteria when identifying Complex requests: (1) the general, expansive or all-inclusive nature of the request; (2) the number of departments involved; (3) the location of records and available method of searching records; (4) the potential number of records implicated; (5) the rights of third parties; (6) the need for clarification of the request; (7) administrative tasks necessary to process the requests; (8) the amount of time needed to review documents for applicable exemptions; (9) the need for legal review of the public records requests; (10) the format of relevant records; and (11) any other relevant circumstances.

The Public Records Officer or designee shall score those requests which appear to be potentially large or Complex by using the Public Records Evaluation Sheet, attached hereto as Exhibit B. A request that scores eight (8) points or less shall be considered a Routine request and will be processed together with other Routine requests in the order such requests were received. A request that scores nine (9) points or greater shall be considered a Complex request and will be process together with other Complex requests in the order such requests were received.

A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be

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considered a request for all of an agency's records. These requests will generally fall into the Complex category. Any requests that are narrowed or clarified will be rescored, using the Public Records Request Evaluation Sheet, to determine if the request qualifies as routine and can then be processed with the other pending routine requests. Requestors are encouraged to consider the needs of others and utilize the public records requests process responsibly.

When the Port receives a request that does not include a request for identifiable or reasonably locatable records the Port should seek clarification. WAC 44-14-04002. If the requestor is unable or unwilling to help narrow the scope of the documents being sought in order to expedite the Port's response and/or reduce the volume of potentially responsive documents or the entire request is unclear, the Port will send a letter denying the request. Otherwise, the Port will respond to those portions of the request that are clear.

A requestor may appeal the determination that a request is Complex to the Port Executive Director, or designee, by providing a written request for review of the determination to the Port Executive Director's office within ten (10) business days of the determination. A written decision shall be issued by the Port Executive Director or designee within five (5) business days from receipt of the appeal unless extended or waived by mutual written agreement.

The Port may deny a bot request that is one of multiple requests from the requestor within a twenty-four hours period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential function of the agency. For purposes of this subsection, "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script. (RCW 42.56.080)

The Port is not authorized to provide lists of individuals for commercial purposes. The Port may require the requestor to provide information as to the purpose of the request to determine whether the requestor intends to use a list for a commercial purpose. The Public Records Officer may also seek sufficient information to determine if another statute or court order may prohibit disclosure.

If the requested public record relates to an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the Port has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice (RCW 42.56.540). Such relief may include a court injunction prohibiting release of the record because such examination would not be in the public interest and would substantially and irreparably damage any person or vital governmental function. The Port may take the above into account when providing an estimate of when the records will be available. Nothing in this policy is intended to, nor does it, create any right to such notice.

The Port may respond to a request to provide access to a public record by providing the requestor with a link to the Port's web site containing an electronic copy of that record if it can be determined that the requestor has internet access and the requestor agrees that the request has been satisfied.

When the requestor has found the records he or she is seeking, the requestor should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.

4. Exemption: The Public Records Act and other statutes exempt or prohibit disclosure of certain public records. It is the policy of the Port of South Whidbey to provide prompt and helpful access to all public records in the Port's custody that State statutes do not exempt or prohibit from disclosure. Requested records may only be withheld or redacted consistent with statutory requirements, which shall be documented for the requestor in accordance with the requirements of RCW 42.56.210.

Some public records may contain specific content that is exempt from disclosure. The presence of exempt information does not necessarily exempt an entire record from disclosure. Exempt portions of an otherwise disclosable record shall be redacted prior to inspection or copying and such redactions shall be documented. The requestor shall be notified of the redaction in accordance with the requirements of RCW 42.56.210.

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The following are summaries of common exemptions relied upon by the Port. Note, the Port reserves the right to assert any exemptions permitted by law when the Port determines non-disclosure serves the public interest and is not limited to the exemptions listed below:

- A. Records that are protected by trade secrets law (RCW 19.108);
- B. Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by the Port within five (5) years of the request for disclosure when disclosure would produce private gain and public loss (RCW 42.56.270 (1));
- C. Personal information in files maintained for commission members and Port employees not limited to addresses, phone numbers, Social Security numbers, driver license numbers, voluntary deductions, marriage status, information about dependents, and any garnishment deductions (RCW 42.56.230(3) & (4));
- D. Preliminary drafts, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the Port in connection with any Port action (RCW 42.56.280);
- E. All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant (RCW 42.56.250(2));
- F. Records created in anticipation of litigation (RCW 42.56.290);
- G. Records reflecting communications between attorneys and Port employees where legal advice is sought or received (RCW 5.60.060(2)); or
- H. Prohibited by statute from disclosing lists of individuals for commercial purposes. (RCW 42.56.070(8)); or
- I. Records relating to the commission of juvenile offenses (RCW 13.50.050).

Other statutes outside the Public Records Act may prohibit and exempt disclosure of certain documents or information RCW 42.56.070(1).

The Port's failure to list an exemption shall not affect the effectiveness of the exemption.

5. **Delayed Responses from Port:** If the Port does not respond in writing within five (5) business days after receiving a public records request, the requestor should contact the Public Records Officer to determine the delay.

6. **Providing Records in Installments:** When the request is for a large number of records, the Port may provide access for inspection and copying in partial installments if it is reasonably determined that it would be practical to provide the records in that way. If the requestor does not contact the Public Records Officer within thirty (30) calendar days to arrange for the review of the first installment, the Port may deem the request abandoned and may stop fulfilling the remainder of the request. RCW 42.56.120(4). The Port may prioritize record requests received after commencing to fulfill the large request.

7. **Electronic records:** The process for requesting electronic public records is the same as the process for requesting paper public records. When a requestor requests records in an electronic format, if technically feasible, the Public Records Officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the Port and is generally commercially available; or will provide the records in a format that is reasonably translatable from the format in which the agency keeps the record.

Making an electronic copy of an electronic record is not "creating" a new record; instead it is similar to copying a paper copy. Similarly, eliminating a field of an electronic record can be a method of redaction; it is similar to redacting portions of a paper record using a black pen or white-out tape to make it available for inspection or copying. WAC 44-14-04003(6)

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When requested, the Port may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. The Port may charge a fee consistent with RCW 42.56.120 for such customized access.

8. No Duty to Create Records: This policy does not require the Port to answer written questions, summarize data or information, create new public records, or provide information in a format that is different from original public records; however, the Port may in its discretion, create such a new record to fulfill the request where it may be easier for the Port to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request.

9. No Duty to Provide Information: This policy does not require the Port to respond to requests for information, research, opinions or advice. Requests for information, research, opinions, advice, or similar requests will not be responded to pursuant to this policy. WAC 44-14-04002(2)

10. No Duty to Supplement Responses: The Port is not obligated to hold current records requests open to respond to requests for records that may be created in the future. A new request must be made to obtain later-created public records.

11. Fees: The charges for public disclosure requests are provided in the Request for Public Records form under the Public Records Request Fee Schedule.

12. Deposit: The Port may require a deposit of up to ten percent (10%) of the estimated cost of copying records prior to copying any records for a requestor. The Port may also require payment of the remainder of the cost before providing all of the records, or the payment of the costs of copying an installment before providing that installment. RCW 42.56.120(4)

13. Availability of Public Records: Public records are available for inspection and copying at the Port Clerk's Office and during normal business hours: Monday through Friday, 9:00 a.m. to 4:30 p.m., excluding the lunch hour (12:00pm to 1:00pm) and excluding legal holidays. Port personnel and the requestor may make mutually agreeable arrangements for time(s) of inspection and copying.

To the extent possible given other demands for space and staff time, the Public Records Officer shall promptly provide space to inspect public records at the Port business office. The Port deems it necessary, in order to comply with the PRA's mandate to protect public records, to require that inspections of public records be conducted in the presence of the Public Records Officer or designated staff. The Port will make every effort to provide staff to oversee the expeditious inspection of public records without unduly compromising or unreasonably interfering with the essential functions of the Port. In accommodating a request for public records inspection, the Port may consider the size of the request, the ease with which the requested records can be made available for inspection, and special accommodations requested by the requestor necessary in order to inspect the records, the availability (schedule) of the requestor to conduct the inspection, the availability of Port staff to observe the inspection, the time constraints on staff availability imposed by other current Port business, and any other relevant circumstance.

After inspection is complete, the requestor shall indicate which documents he/she wishes to have copied or scanned using a non-permanent method of marking the desired records as approved by the Public Records Officer. The Public Records Officer will arrange for copying.

14. Preservation of Public Records: No member of the public may remove a public record from any Port buildings. No member of the public may remove a public record from a viewing area, disassemble, or alter, fold, mark, deface, tear, damage or destroy any public record. Public records maintained in a file jacket or binders, or in chronological order, may not be dismantled except for the purpose of copying, and then only by Port staff. Copies of public records may be copied only on Port copying machines unless other arrangements are made by the Public Records Officer. No food or drink will be permitted during the inspection of public records. Access to file cabinets, shelves, vaults and other Port storage areas is restricted to authorized Port staff.

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15. Organization of Public Records: The Port finds that maintaining an index as provided in RCW 42.56.070(4) for use by the public would be unduly burdensome and would interfere with agency operations given the high volume, various locations, and types of public records received, generated and otherwise acquired by the Port. RCW 42.56.070(4) & Resolution No. 2023-05. Notwithstanding the foregoing, the Port will maintain its records in a reasonably organized manner and take reasonable actions to protect records from damage and disorganization.

16. Closing Abandoned or Unpaid Requests: If the requestor withdraws the request, fails to fulfill his or her obligations to inspect the records within thirty (30) days of notice that the records are available for inspection, or fails to pay the deposit, installment payment or final payment for the requested copies, Port personnel will close the request. Port personnel will document closure of the request and the conditions that led to closure. RCW 42.56.120

17. Denial of Request Due to Exemption: All denials of requests for public records will be accompanied by a written statement specifying the reason(s) for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. RCW 42.56.210(3)

18. Mechanism for Review of Denial: Any person who objects to the denial of a public records request may petition in writing to the Port Clerk for a review by the Port Attorney of that decision. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer denying the request. The Port Attorney shall perform a review of the denial as promptly as possible. Pursuant to state law, the review shall be deemed concluded at the end of the second business day following the denial to represent final action for the purposes of judicial review. RCW 42.56.520

19. Judicial Review: Any person may seek court review of denials of public records requests pursuant to RCW 42.56.550. This must be filed within one year of the agency's closing the request or the last production of a record on a partial or installment basis.

20. Retention of Records: The Port is not required to retain all records it creates or uses. However, the Port will follow RCW Chapter 40.14, Preservation and Destruction of Public Records, in the retention and destruction of public records. The Secretary of State, State Archives Committee, approves a general retention schedule for local agency records that is common to most agencies. Individual agencies may seek approval from the Local Records Committee for retention schedules specific to their agency or that, due to their particular business needs, must be kept longer than provided in the general schedule.

The retention schedule for local agencies is available at www.secstate.wa.gov/archives. Retention schedules for documents vary based on the content of the record. WAC 44-14-03005.

21. Loss of Right to Inspect: Inspection shall be denied and the records withdrawn by the Public Records Officer if the requestor, when reviewing the records, acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the Port.

22. Disclaimer of Liability: Neither the Port nor any officer, employee, official or custodian shall be liable, or shall a cause of action exist, for any loss or damage based upon a release of Public Records if the person releasing the records acted in good faith in attempting to comply with this policy.

This policy is not intended to expand or restrict the rights of disclosure or privacy as they exist under state and federal law. Despite the use of mandatory terms such as "shall", nothing in this policy is intended to impose mandatory duties on the Port beyond those imposed by state and federal law.

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Exhibit A

REQUEST FOR PUBLIC RECORDS

Date of Request: _____

Name: _____

Mailing Address: _____

Daytime Phone _____ Email: _____

Description of records (include dates, as applicable):

Date Desired: _____

Upon locating responsive documents I request:

Inspection only

Copy all

Inspection, copy selected pages

I will pick up records when ready

Print records only

Electronic records only

Print and electronic records

Mail records at my expense

* Copying, data transfer and postage fees will apply and must be paid before documents will be delivered.

Note: The Public Records Act ensures that existing documents/records will be provided, not that new documentation will be created.

If I have requested a list of individuals, I certify that the information obtained through this public disclosure request will not be used for commercial purposes (RCW 42.56.070 (9))

The Port of South Whidbey cannot respond to your request to inspect or copy a record unless this form and declaration on non-commercial use has been completed and signed.

Requestor Signature: _____ Date: _____

* Public Records Request Fee Schedule:

Scanned documents: .10 per page

Electronic files: .05 for every 4 files

Photo copies: .15 per page

** EMAIL COMPLETED FORM TO: support@portofsouthwhidbey.com

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TO BE COMPLETED BY PORT PERSONNEL

- No identifiable record can be located
- The record you requested is exempt from disclosure by law. (see below)
- Additional time is necessary to process your request per RCW 42.56.520. (see below)
- The records were picked up in person. Signature: _____
- The amount of \$ _____ for _____ copies was paid upon receipt.
- Records will be mailed when amount billed of \$ _____ has been received.
- Portions of the record(s) are exempt from disclosure and have been redacted. (see below)

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- The document(s) you requested are exempt and/or portions of the document(s) you requested are redacted for the Following reason(s) checked below:
 - 1. Residential addresses and phone numbers, personal wireless numbers, personal email addresses, social security numbers and emergency contact information for employees or volunteers of a public Agency and the names, dates of birth, personal email addresses, social security numbers and emergency contact information of dependents of employees or volunteers of a public agency that are Held by any public agency in personnel records are exempt for disclosure. RCW 42.56.250 (3).
 - 2. Attorney – client privileged communication(s) and/or attorney work product are exempt from disclosure. RCW 42.56.070 (1); RCW 5.60.060(2)a; RCW 42.56.290
 - 3. Personal information in files maintained for employees, appointees or elected officials to the extent Disclosure would violate their right to privacy. RCW 42.56.230(2)
 - 4. Other _____

In accordance with RCW 42.56.520, additional time is needed to clarify the intent of the request, locate and assemble the information requested, notify third parties affected by the request and/or determine whether any of the information request is exempt and that a denial should be made to any or all parts of the request.

I anticipate (additional) documents, if any will be released on _____.

This is a partial or installment release. If payment is not received or records are not claimed, the Port of South Whidbey is not obligated to fulfill the balance of this request. RCW 42.56.120

If you have any questions or concerns about your Public Records Request, please call the Public Records Officer at 360-331-5494.

This response was completed for the Port of South Whidbey by _____.

On _____.

PLEASE NOTE: Local governments are NOT required to create new documents to comply with the Public Records Act.

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Exhibit B

PUBLIC RECORDS REQUEST EVALUATION SHEET

To determine if a public records request shall be classified as Routine or Complex.

<u>Weight</u>	<u>Measurement Criteria</u>
0	(1) General, expansive or all-inclusive nature of request
1	Specific documents, records are identified
1	Records generally identified
2	Records Unidentified
0	(2) Number of departments involved
1	Records in one department
1	Records in two departments
2	Records in three or more departments
0	(3) Location of available/relevant records
1	Records in active files
1	Records in archive files
2	Records in searchable database
3	Records must be searched in individual locations
0	(4) Potential number of records implicated
1	Less than 10 documents (not pages)
1	More than 10 and less than 50 documents
3	More than 50 and less than 500 documents
5	Greater than 500 documents
0	(5) Third party notifications
1	No third party notifications
1	Notifications are necessary
0	(6) Need for clarification
1	No clarification needed
1	Clarification needed
1	(7) Administrative tasks needed to process request
2	Interpretation
1	Search hard copies
2	Search electronic copies
2	Provide Metadata
2	Obtain records from other agencies
1	File prep for photocopy, scanning
1	Burning CD/DVD or outsourcing production
0	File prep for electronic production
0	(8) Time needed for review for exemptions
1	No review time
2	Review time less than 2 hours
2	Greater than 2 hours and less than 10 hours
3	Greater than 10 hours
0	(9) Legal review required
1	No legal review required
1	Legal review required
0	(10) Formatting of relevant records
5	No need to reformat records
5	Requestor requires reformatting records
0	(11) Other Relevant Factors

Total Score:

Score is eight (8) or less: Public Records request will be Routine and will be processed with other Routine requests and in the order such request was received. Score is nine (9) or more: Public Records request will be Complex and will be processed with other Complex requests and in the order such request was received.