

Responding to Public Records Requests

Some Nuts and Bolts

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Basic Legal Requirements - I.C. §74-102

- Records are available for release unless they are excluded
- Not FOIA – have right to examine records – you oversee
- Exclusions may be found in varied locations – always consider personal privacy
- Federal Trade Commission red flag rules may protect information to prevent identity theft – often involving utility accounts
- First 100 pages or two hours of supervision are free of charge
- More than 100 pages or more than two hours are charged at “cost”
- Response must be made within three (3) days
- If more than three (3) days is required to comply, then can take up to ten (10) days

Roles You Don't Fill

- Research staff for applicant
- Cannot ask why records are requested
- If questions could help narrow the field, begin your response with I know I can't ask you why ...
- A records request must request records, not answers to open-ended questions
- Don't make things up on the fly; have a policy adopted by the city council – consistency of charges, etc.

Conditions for Responding

- Requested records must be clearly identified – not subjective about content
- Agency is not required to create a requested record
- Be cautious about denying access when a query to a database could solve the problem
- Cannot ask a requester why information is sought
- Almost always best to respond in writing, and if there could be any question to ask for the request in writing
- Do not make responding more complicated than necessary

Request Granted in Full

- Respond in the most expeditious way
- Often electronic files (.pdf) can be more efficient than paper copies
- May telephone requester to determine preferred response media
- No need for cover letter if request is brief and without question (minutes from last meeting; copy of ordinance 263, etc.)
- If there will be fees, collect them in advance of releasing records
- Decide how you are going to treat your local newspaper, or others (regarding fees)
- Remember, you may want the story told

Request Granted in Part, Denied in Part

- Be sure to contact your city attorney if you are going to deny a records request
- Any denial, even partial, should be done in writing
- Every written response should repeat what has been requested
- May want to clarify best way to respond (media)
- Denial letter should include specific reference to basis for denial
- Again, if there are fees for what you do provide, collect them in advance
- Include information and statutory excerpt regarding appeals (§74-115)

Response Denied Because of Statute

- Be sure to contact your city attorney if you are going to deny a records request
- Remember, you know this field better than most applicants. If you know a way they can get what they want, don't hide the ball
- Be specific about the statute upon which you intend to rely. Include its text or a specific reference with a paraphrase in your reply
- Response should include what was requested
- Include information and statutory reference regarding appeals in your reply (§74-115)

Request Denied For Other Reasons

- Be sure to contact your city attorney if you are going to deny a records request
- Identify clear basis for your denial
- Prepare a written response
- Explain your rationale for denial; clear it with your city attorney
- Include information about filing an appeal including the statutory excerpt regarding appeals (§74-115)

Basics to Remember

- The law generally supports disclosure
- Don't play "hide the ball"
- Have a policy that provides an outline of how you'll respond – don't make stuff up (too much)
- Unless very simple, writing is required on both sides
- Any denial should include a quote of the statute (I.C. §74-115)
- Avoid creating unnecessary adversaries

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