

Board Policy No. 16 Public Records Requests

Summary

This policy outlines NCTD's procedure for responding to requests to review or obtain copies of public records and to establish guidelines for adhering to the legal requirements of the California Public Records Act ("Act") and other applicable laws.

Purpose

This policy is established in accordance with Government Code § 6253.4, subdivision (a), which states: "Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section." This policy sets forth NCTD's policies and procedures for handling requests to inspect and/or copy public records. It is designed to be in compliance with the California Public Records Act (Gov. Code § 6250 et. seq.) and all existing laws pertaining to disclosure of public records. If any provision of this policy conflicts with current state or federal law, the law shall take precedence.

Definitions

As used in this policy, the following terms shall have the following meanings:

"NCTD" shall mean the North County Transit District.

"Person" shall mean any natural person, corporation, partnership, limited liability company, firm, or association.

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, electronic mail, facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and any record thereby created, regardless of the manner in which the record has been stored.

"Public records" shall mean any writing containing information relating to the conduct of the NCTD's business prepared, owned, used, or retained by the NCTD regardless of physical form or characteristics.

"Requester" shall mean a person, or representative of a person, who has submitted a request for records to the NCTD by mail, fax, e-mail, telephone, or in person.

Policy

This written policy will establish NCTD's guidelines for responding to the most common types of requests received by NCTD.

The California Public Records Act was enacted to protect individual privacy rights while acknowledging the "fundamental and necessary right" of every person to have "access to information concerning the conduct of the people's business." The Act, in part, provides a

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means of safeguarding the accountability of the government to the public. Local public agencies, such as NCTD, are subject to the Act. NCTD is required to keep public records open to inspection during its regular office hours.

Right to Inspect

Disclosable public records of NCTD are open to inspection by any person at all times during the normal business hours of NCTD offices in accordance with the provisions of this policy. Copies of disclosable public records may be obtained by any person, in accordance with the procedures set forth in this policy. Any disclosable portion of a record that can be reasonably separated from other parts of the record that are exempt by law shall be made available for inspection and/or copying after the exempt portions have been redacted. Any request for records and any responding documents may be subject to review by the NCTD's legal counsel prior to any inspection of the records or delivery of copies.

General Guidelines

Upon receipt of a request to inspect or copy records, NCTD shall, within ten (10) calendar days, determine whether the request in whole, or in part, seeks disclosable records in the possession of NCTD. In "unusual circumstances," NCTD may extend the 10 calendar day time limit by no more than fourteen (14) calendar days beginning from the end of the original ten (10) day period by giving written notice to the requester explaining the reasons for the extension and providing a date when a determination will be given. As used in this policy and pursuant to Government Code § 6253, subdivision (c), "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

1. 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.
2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
3. 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 NCTD having substantial subject matter interest therein.
4. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

The Public Records Act requires NCTD to assist a requester, to the extent reasonable under the circumstances, to make a focused and effective request. The Act does not require NCTD to create documents and/or records.

Questions about NCTD (as opposed to requests for documents) are not considered public records requests and should be referred to the Manager of Communications and Marketing for response.

Exceptions to the ten (10) day rule are as follows:

1. Reports and statements filed under the Political Reform Act (such as Form 700s) must be made available for inspection and copying, during regular business hours, commencing as soon as practicable, but in no event later than the 2nd business day following the day the report or statement is received by NCTD.

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2. Board agendas and agenda packets distributed to all, or a majority of the Board, must be made available at the address listed on the meeting agenda upon request without delay.
3. Members of the public will have access to copies of documents prepared by NCTD staff and distributed at Board meetings to all or a majority of the Board members.

Requests to Inspect and/or Make Copies

The District encourages requests to be submitted via GoNCTD.com. If any member of the public chooses to make a verbal request for records, such requests will only be accepted during normal business hours when NCTD offices are open. This requirement complies with the Public Records Act mandate that public records must be “open to inspection at all times during the office hours of the state or local agency...” (Gov. Code § 6253, subd. (a)). (Emphasis added.) This requirement to submit records requests during normal business hours also complies with the Public Records Act provision that allows the NCTD to “adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in [the Public Records Act],” (Gov. Code § 6253, subd. (e)).

Requests should clearly identify the records requested. The requester should specify the records to be inspected/copied with sufficient detail to enable the NCTD to identify the particular records. If the request seems ambiguous or unfocused, NCTD staff will make a reasonable effort to obtain additional clarifying information from the requester that will help identify the record or records. Pursuant to Government Code § 6253.1, NCTD staff shall do all of the following, to the extent reasonable under the circumstances:

1. 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;
2. Describe the information technology and physical location in which the records exist; and
3. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

A response to a request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

Records Exempt from Disclosure

Records which are exempt from disclosure by law include but are not limited to the following:

1. Preliminary drafts, notes, interagency, or intra-agency memoranda which are not retained by the NCTD in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure, (Gov. Code § 6254, subd. (a)).
2. Records pertaining to pending litigation to which NCTD is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such pending litigation or claim has been finally adjudicated or otherwise settled (Gov. Code § 6254, subd. (b)).
3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy (Gov. Code § 6254, subd. (c)).

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4. Statements of personal worth or personal financial data required by the NCTD and filed by an applicant with the NCTD to establish his/her personal qualification for the license, certificate, or permit applied for (Gov. Code § 6254, subd. (n)).
5. The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made for or by NCTD relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreements are obtained; provided that the law of eminent domain shall not be affected by this provision (Gov. Code § 6254, subd. (h)).
6. Computer software developed by a state or local agency is not itself a public record (Gov. Code § 6254.9).
7. The records made, if any, of closed sessions, along with any confidential information that has been acquired by being present in a closed session, are not public records subject to inspection, to the extent permitted by the Ralph M. Brown Act and the Public Records Act (Gov. Code § 54957.2, 54963).
8. Records, the disclosure of which is exempted or prohibited pursuant to federal or state law (i.e., attorney-client privilege under the California Evidence Code) (Gov. Code § 6254, subd. (k)).
9. Social security numbers. State law requires local agencies to redact social security numbers from records before disclosing such records to the public (Gov. Code § 6254.29).
10. Test questions, scoring keys, and other examination data used to administer an examination for employment are exempt from disclosure (Gov. Code § 6254, subd. (g)).
11. Sensitive security information (SSI) or information about security, operations, facilities, capital projects, or other critical infrastructure whose disclosure would be detrimental to the security of transit employees, customers, or infrastructure. SSI is not subject to disclosure pursuant to applicable federal law.

The above partial list of exemptions is subject to existing state and federal law, and any changes in the law are automatically incorporated into this policy. A comprehensive list of exempt documents and documents that are not deemed to be public records is provided in the California Public Records Act (Gov. Code § 6250 et. seq.).

Fees for Copies

NCTD shall charge fees for copies of identifiable public records or information and electronic records as follows:

Description	Price
Copy price per page – standard letter size (8 ½” x 11”)	10¢ per page
Copy price per page - legal size (8 ½” x 14”)	10¢ per page

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Copy charges for oversized documents that must be outsourced for duplication/reproduction	Actual cost
Price for public records in electronic format, including DVD of public meetings, when requested in electronic format	Cost in accordance with Government Code § 6253.9, as it may be amended from time to time
Copy charge for duplication of DVD	\$5.00 per DVD

When making photocopies in response to a public records request, no invoice will be sent with the response unless the amount totals at least \$2.00.

Payment is requested in advance of delivery of any records. All fees are subject to change.

Records Retention

Refer to Board Policy No. 15, Records Retention Policy and Schedule

Approvals

Mark Packard 10-20-16
Board Chair Date

Matthew O. Zucker 10-20-2016
Executive Director Date

[Signature] 10-20-2016
General Counsel Date

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DATE ISSUED	REVISION NUMBER	RESOLUTION NUMBER	COMMENTS
10/18/2012	Adopted		
10/17/2013	1		2013 Revision
10/16/2014	2		2014 Revision
10/20/2016	3	16-10	2016 Revision