

PUBLIC RECORDS



REQUEST HANDBOOK

Prepared by the Tempe City Attorney's Office

Revised 8/2007

TABLE OF CONTENTS

I.	PURPOSE OF MANUAL.....	3
II.	WHAT IS THE PUBLIC RECORDS LAW AND HOW DOES IT APPLY TO THE CITY OF TEMPE?.....	3
	A. Title 39.....	3
	B. Freedom of Information Act.....	3
	C. Definition of Public Record.....	3
	D. Different types of Public Records Requests.....	5
	E. Electronic Records and the Public Records Requests.....	5
III.	HOW DO I RESPOND TO A PUBLIC RECORDS REQUEST?.....	5
	A. Generally.....	5
	B. Steps for Responding to Public Records Requests.....	6
	C. What Happens If a Public Records Request is Denied?.....	7
	D. How Should I Respond to Custom Requests?.....	8
	E. How does the City handle Requests for Personnel Files and Evaluations?.....	9
	F. How does the City handle Requests for E-mail?.....	9
	G. How Should Standing Requests be Handled?.....	10
IV.	CAN THE CITY CHARGE A FEE FOR RESPONDING TO A PUBLIC RECORDS REQUEST?.....	11
	A. Non-Commercial Public Records Requests.....	11
	B. Commercial Public Records Requests.....	11
V.	APPEAL PROCESS.....	12
VI.	WHEN SHOULD I CALL THE CITY ATTORNEY’S OFFICE?.....	12
VII.	HOW SHOULD MEDIA REQUESTS BE HANDLED?.....	12
VIII.	HOW LONG SHOULD RECORDS BE RETAINED?.....	12

CITY OF TEMPE

PUBLIC RECORDS REQUEST HANDBOOK

I. PURPOSE OF MANUAL

The City of Tempe values openness. Therefore, it is the City's policy to comply with its obligations under the Arizona public records law timely, accurately and completely. This handbook is designed to assist City of Tempe departments and divisions with complying with the City's policy in processing public records request. While this handbook attempts to outline the public records law, the types of documents that must be disclosed, and the method for disclosure, there will be times when your questions cannot be answered by this manual. In such cases, you should contact the City Attorney's Office at 350-8227 for answers to your questions.

II. WHAT IS THE PUBLIC RECORDS LAW AND HOW DOES IT APPLY TO THE CITY OF TEMPE?

A. TITLE 39

The Arizona public records law is found in the Arizona Revised Statutes at § 39-121, *et seq.* The law applies to all public entities, including the City of Tempe. The City of Tempe values integrity. One of the purposes of the public records law is to ensure that government entities are trustworthy and accountable to the public by giving the public a right of access to records concerning an official's or a public agency's activities.

B. FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) is the federal version of the public records law. It is not applicable to local entities such as the City. Courts have stated, however, that FOIA and the cases interpreting it are helpful in construing the state public records laws.

C. DEFINITION OF PUBLIC RECORD

The term "public record" should be interpreted liberally in order to facilitate the dissemination of information to the public. Few records in the possession of a public agency or employee will not be considered a "public record." The exceptions are discussed later in this handbook. For purposes of responding to a public record request, a public record includes the following:

1. A record that is made by a public official in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference. *Examples include:*
 - a. Ordinances;
 - b. Staff Summary Reports;
 - c. Public announcements;
 - d. Letters to outside parties.

2. A record that is required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law to serve as a memorial and evidence of something written, said, or done. *Examples include:*
 - a. Minutes of meetings;
 - b. Meeting notices.

3. A written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by express provisions of law or not. *Examples include:*
 - a. Memorandums;
 - b. File notes;
 - c. Internal communications, including certain e-mail (see discussion under E-Mail Communications).

4. Records required to be disclosed pursuant to statute, the Arizona courts or opinions of the Attorney General's Office. *Examples include:*
 - a. Permits and application forms for permits;
 - b. Official minutes and records of governmental bodies, boards and commissions;
 - c. Records of expenditures of public monies (salary records of public employees are specifically included);
 - d. Books of account and final audits of the City;
 - e. Police investigative reports, unless the City can specifically show that release of the report would impair an ongoing investigation or interfere with official duties of the law enforcement and/or a prosecuting agency;
 - f. Electronic databases and computer backup tapes made or received by any governmental agency in connection with the transaction of public business;
 - g. Preliminary, tentative and final City budgets;
 - h. Final selection list of candidates that are seriously being considered and are interviewed for a public employment position;
 - i. Utility records should have the following information redacted: social security numbers, date of birth, and if identified as an unlisted number, the telephone number. Additionally, the customer home address and telephone number contained in the utility records of police officers, prosecutors, defense attorneys, and judges should be redacted. Other City employees and other utility customers can request that their address and telephone number be kept confidential if they can provide a reasonable basis for the confidentiality thereof;
 - j. Delinquent utility charges of elected officials;
 - k. Reports of industrial injuries.

D. Different Types of Public Records Requests.

Under Arizona law there are three basic types of public records requests. The first is a non-commercial public records request, which is the most common request that the City and its departments receive. The second is a commercial records request. Finally, there are custom requests. The unique nature of each of these requests and how to handle them is set forth below.

E. Electronic Records and the Public Records Requests.

Electronic records are any recorded information that has a value to the City for conducting its business and meeting its legal obligations. A number of the records cited above are electronic records and are subject to the public records laws. Additional electronic records can include documents stored in such devices as blackberrys, electronic calendars, powerpoint presentations, etc. It is necessary to evaluate any request for electronic documents like any other request. Should there be any question as to whether or not any electronic record should be produced pursuant to a public records request, contact the City Attorney's Office.

III. HOW DO I RESPOND TO A PUBLIC RECORDS REQUEST?

A. GENERALLY

A good approach to public records requests is to first identify whether the record(s) requested is indeed a public record and which type of public record it is. For ease in identifying and analyzing your public records, we have provided the three exceptions to public records and the three types of public records. As this is not a clear area of the law, contact the City Attorney's Office when questions arise.

1. Three Broad Exceptions to Public Records:

Is your document covered by one of the exceptions to public records?

- (a) Confidentiality: Disclosure is not required where prohibited by statute, court rule, or court order. For example, attorney-client communications; home addresses and telephone numbers of police officers, prosecutors, defense attorneys, and judges; executive session minutes; social security numbers; court orders, etc. There are over 300 Arizona statutes that make certain information confidential. A comprehensive list of these statutes is included in the Arizona Attorney General publication entitled *Arizona Agency Handbook*, which is accessible on the Internet at www.ag.state.az.us.
- (b) Personal privacy: Some data need not be disclosed due to an individual's privacy rights when that privacy right outweighs the public's right to know. Information is private if it is intended for or restricted to the use of a particular person or group or class of persons, when it is not freely available to the public. The privacy interest encompasses the individual's control of information concerning his/her person.

Examples include:

- Home address, telephone numbers, racial background, age, birth dates, credit or debit card numbers, financial account numbers, or credit reports of individuals;
- Floor plans will not be released without the written permission of the owner and/or design firm in order to protect copyright and personal privacy interests of the occupants/owners. When possible, City staff will divulge general information concerning the construction, such as total square footage, site plan, and information read from the plans without revealing details of each room, location of private areas, security systems, or other personal information.

(c) **“Best interest”**: Disclosure may not be required if release of the information is not in the best interest of the public body. *Examples include:*

- Release would inhibit public safety efforts;
- Release would place the City at a competitive disadvantage.

2. The Three Types of Public Records Requests:

- (a) **Must be released**: Most records are “public records” and if none of the three exceptions apply, the records must be released.
- (b) **May be released**: Some records do not have to be released because one of the three exceptions applies, but the release of the information is within the City’s discretion because release is not prohibited by state or federal law, court rule, or court order.
- (c) **Must not be released**: Some information cannot be disclosed because its release is prohibited by state or federal law, court rule, or court order.

B. STEPS FOR RESPONDING TO PUBLIC RECORDS REQUESTS

1. Review the City’s Public Records Policy Manual.
2. Review your department/division records to become familiar with the types of records that may be requested. Develop your own list of commonly requested documents. Meet with an attorney from the City Attorney’s Office if necessary to assist you in determining how your records are classified.
3. Ask the person requesting public records to read and complete the City Of Tempe’s Public Records Request Application For Public Records, the City of Tempe’s Copy Fee Schedule and, if the request is a commercial request, the Statement of Commercial Purpose Pricing Computation Worksheet (see attached forms).

NOTE: Public records requests should be submitted to City of Tempe departments in writing using the attached forms. The Communication and Media Relations Director has the discretion to accept verbal public data requests or other requests submitted in writing.

4. Distinguish public records request from subpoenas and court orders. Subpoenas and court orders will indicate a court and case name. Refer all subpoenas and court orders to the City Attorney's Office.
5. Identify the documents requested. Do you have access to these documents or do you need to involve another department/division? If a request involves multiple departments and divisions, call the City Attorney's Office for assistance.
6. Determine the status of the documents. Are they public records that must be released, may be released, or must not be released? If you are unsure, call the City Attorney's Office for assistance.
7. It is possible that only a portion of the document(s) "must" or "may" be released. Should you determine that there is a portion of the document that falls within an exemption, then you still have a duty to disclose the document. However, prior to disclosing the document you must "redact" the information that falls within an exemption. Redaction is simply obscuring the exempted information prior to disclosing the document.
8. Compile the documents and respond promptly. What constitutes "promptly" has not yet been determined by the courts, but the City should respond as soon as practical given the factual circumstances of each case. Ensure that the "For Official Use Only" portion of the City of Tempe's Copy Fee Schedule form is completed as you process the request.
9. The right to inspect documents is not unqualified. Records may not be inspected at such times and in such a manner as to disrupt public business. Prior to allowing anyone to inspect any records make sure you review them to determine whether or not any of the documents need to be withheld or partly redacted.
10. Any person may request to examine or be furnished copies, printouts, or photographs of any public record during regular office hours. If copies are requested and the record custodian does not have the facilities for making copies of the public records, the copies may be made while the public records remain in the control of the custodian and subject to the custodian's supervision. The City is not required to allow the requester to make his own copies.
11. Prior to turning over any documents being requested make sure you collect payment for the requested documents.

C. WHAT HAPPENS IF A PUBLIC RECORDS REQUEST IS DENIED?

1. If a public records request has been improperly denied, the person or entity requesting the record may bring a special action against the City. A person who believes he/she has been improperly denied access to public records may bring a special action against the agency or officer. The City of Tempe has the burden of proving that release of specific public information should not be allowed.

2. If the court decides that the person was wrongfully denied access, then the court may award damages against the City. This may include the award of legal costs, including attorney's fees.
3. In the event there is a substantial issue of confidentiality, the City may file a special action against the party requesting the confidential records and request the Superior Court to make an *in camera* review of the requested material and make a decision as to whether it is a public record subject to disclosure.

D. HOW SHOULD I RESPOND TO CUSTOM REQUESTS?

Arizona public records law does not require the City to: (1) obtain a new record; (2) create new report formats; (3) convert data to different medium or formats; (4) perform custom programming or extraction; or (5) perform research projects.

- Custom requests are unique requests that ask a department to create new documents or sort through current documents and create original reports.
- Custom requests can be denied and are not encouraged. Arizona law does not require the City to create documents that do not already exist in order to comply with a public records request. However, a manager may choose to fulfill a custom request for non-existing information or for existing information in a different format or medium when it is in the City's best interest to do so.
- Factors to consider in evaluating whether to fulfill a custom request include the availability of resources (personnel, equipment, etc.), the data subject to disclosure, production costs and maintenance costs.
- Custom requests are not favored and an employee must have a justifiable reason why the custom request should be provided. This prevents the arbitrary release of documents to different requestors.
- Once a "custom" document is created it then becomes a public record and is subject to the standard public records requests guidelines and must be kept by the City and/or any department pursuant to the records retention schedule.
- The City may charge any person or entity a fee for custom requests. The amount is to be "reasonable." The fee may include: reproduction costs, data maintenance costs, cost of services, and/or the fair price agreed upon by the parties. A fee may NOT be charged to search for public documents. Also, departments should keep records for the basis of determining fees. Costs should not be so prohibitive to discourage document requests.

E. HOW DOES THE CITY HANDLE REQUESTS FOR PERSONNEL FILES AND EVALUATIONS?

The City's general policy is to keep personnel records confidential in order to preserve the employee's privacy rights. The City will review a request for personnel files to determine whether the request is made pursuant to a matter of public interest, such as a claim letter, written complaint, criminal investigation, litigation, or an allegation involving misconduct of a public employee.

1. Information that **will** be released:
Regardless of the reason that the request is made, the following information will be released:
 - a. name;
 - b. job title;
 - c. department;
 - d. supervisor;
 - e. date of hire;
 - f. salary;
 - g. date of termination.

2. Information that **may** be released:
If the request is made pursuant to a matter of public interest, the following information will be released:
 - a. discipline report form (indicating the date, reason for discipline and actual discipline given).

3. Information that **will not** be released:
The following information will NOT be released to the public:
 - a. social security number;
 - b. birth date;
 - c. home address and telephone number;
 - d. medical records.

F. HOW DOES THE CITY HANDLE REQUESTS FOR E-MAIL?

- E-mails, including any digitally saved voicemails, may be public records that are subject to release under public records law.

- E-mails generated or received on a city computer system purchased with public funds and subject to written policies does not necessarily mean that the e-mails must be released. Rather, the nature and the purpose of the e-mail must be examined. E-mails are released if the information in the e-mails reasonably relate to the activities of an official in furtherance of their duties as an official. E-mails of personal affairs are not subject to release.

- If a broad e-mail request is made, ask the requester to narrow their request to a specific time frame and a specific topic. If they refuse to narrow such a request contact the City Attorney's Office for further guidance on how to proceed.

- If the request is made for e-mail of a specific City employee or elected official, notify the employee that the request has been made and ask that the employee begin reviewing his/her e-mail folders for e-mail messages within the scope of the request.
- Once the employee has printed the e-mail messages that meet the request, forward the request and the messages to the City Attorney's Office for review. Please be aware that the City Attorney's Office will review the messages consistent with the aforementioned guidelines.
- A department challenging disclosure of a public record bears the burden of overcoming the legal presumption favoring disclosure of the record. The department will have to specifically show how the production of the e-mail would violate privacy, confidentiality, or the city's best interests.
- If e-mails are requested, be sure to inform the employee or elected official and tell them not to delete their e-mails. E-mails may or may not be deleted periodically. It must be determined whether the email would be considered a public document. E-mails that are public records may only be deleted after the expiration of the time period specified in the relevant record's retention policy.

G. HOW SHOULD STANDING REQUESTS BE HANDLED?

- Standing requests are requests for certain records to be disseminated on a scheduled basis.
- There is no obligation to fulfill these requests. If a standing request is created the appropriate document request forms must still be filled out.
- Some departments may have standing requests which they honor, but creating new standing requests or keeping outdated standing requests is discouraged.
- If a standing request is created, include an advisory statement which indicates the department is not making an open ended commitment. Include an exact time schedule for how long the request will be honored. Try to keep the standing request below four months. Also, indicate that the requestor is responsible for renewing the request once it expires.
- **E-mail Distribution Lists**
 - It is appropriate to release a record through an e-mail.
 - Records release is a formal process; even if done through e-mail, the appropriate forms should still be filled out.
 - E-mail distribution lists are like standing requests. They are not encouraged and should be held to the same guidelines as standing requests.

- If a distributions list is created, outside sources should be distinct from internal e-mail contacts. This separation prevents unknowingly releasing confidential or personal information.

IV. CAN THE CITY CHARGE A FEE FOR RESPONDING TO A PUBLIC RECORDS REQUEST?

Fees can be charged for most responses to public record requests. However, how the fee is calculated depends upon the type of public records request. A fee may not be charged for certain public records requests. Specifically, requests concerning a claim for a pension, allotment, allowance, compensation, insurance or other benefits which are to be presented to the United States or a bureau or department thereof must be honored free of charge.

A. NON-COMMERCIAL PUBLIC RECORDS REQUESTS

The City can only recover the cost of reproduction by imposing a fee. Copy fees will be collected in accordance with the City of Tempe's Copy Fee Schedule. This may include such costs as paper, machinery for reproduction, employee time to do the reproduction. The cost to search for the material CANNOT be recovered.

B. COMMERCIAL PUBLIC RECORDS REQUESTS

1. This is the use of a public record for the purpose of:
 - sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale, or
 - obtaining of names and addresses from such public records for the purpose of solicitation, or
 - for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record.
2. People who are regularly engaged in gathering, reporting, writing, editing, publishing or broadcasting news to the public are NOT considered commercial users.
3. The fee for this type of request may include costs for reproduction, searching, data maintenance, and the value of the reproduction on the commercial market.
4. Staff will utilize the Statement of Commercial Purpose Pricing Computation Worksheet when calculating the value of the reproduction on the commercial market. It is understood that information will have a greater value if it is to be resold or utilized by more than one person or agency.

V. APPEAL PROCESS

A person or entity that is denied records pursuant to a public records request may ask the City to review the denial by asking the person who denied the request to re-evaluate the decision. If that person receives such a request it is to be forwarded to the City Attorney so that the City Manager, City Attorney, City Clerk and the Communication and Media Relations Director (if applicable) can consult with one another to determine whether or not the denial was proper.

VI. WHEN SHOULD I CALL THE CITY ATTORNEY'S OFFICE?

- When the request is made concerning a matter currently in litigation or one that is likely to lead to litigation.
- When the item requested is a memorandum containing legal advice from the City Attorney's Office or from one of the City's outside counsel.
- When the request involves multiple departments or divisions.
- When the request involves producing a draft of work in progress and not the final product.
- When, after reviewing the handbook and consulting your supervisor, you are unsure how to respond.

VII. HOW SHOULD MEDIA REQUESTS BE HANDLED?

- All media requests should be handled through the Communication and Media Relations Division of the City's Community Relations Department and the Public Information Officer for the City Police Department when the request is applicable to the police department and/or its personnel.

VIII. HOW LONG SHOULD RECORDS BE RETAINED?

- Each City department's retention schedule is different and has an approved document classification and retention schedule. A department's schedule can be requested through the Clerk's office.
- If it is not clear if a document can be destroyed, contact the City Attorney's Office for advice.



PUBLIC RECORDS REQUEST
Application for Public Records

Request is hereby made for the following public records (indicate document name, page numbers, address and permit number where applicable):

Pursuant to A.R.S. §39-121.03, the applicant certifies that said documents: (check one)

- Will not be used for a commercial purpose.
- Will be used for the following commercial purpose (statement of commercial purpose pricing computation worksheet shall also be completed and attached):

A commercial purpose is defined by A.R.S. §39-121.03 as “the use of public record for the purpose of the sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale, or obtaining of names and addresses from such public records for the purpose of solicitation, or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record.”

NOTICE: A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records. A.R.S. § 39-121.03(C).

Applicant’s name (print) _____

Applicant’s signature _____

Address _____

Phone Number _____ Request Date: _____



**PUBLIC RECORDS REQUEST
Statement of Commercial Purpose
Pricing Computation Worksheet**

A commercial purpose is defined by A.R.S. §39-121.03 as the use of public record for the purpose of:

- The sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale, or
- Obtaining of names and addresses from such public records for the purpose of solicitation, or
- For a purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record.

The specific information which will be utilized from the record(s) requested on _____ is: _____
(Date of Request)

Which will be used for:

1. Sale or resale to _____ (identify market) for \$ _____ (price or cost) per _____.
2. Producing a document, information or other material containing all or part of the information in the public record: (Describe document or material and price) _____

3. Solicitation to _____ (Identify market) for (what) _____ or \$ _____ (price)
4. Soliciting a business or commercial relationship. (Describe and give price or value) _____

5. Other purpose: (Describe and give price or value) _____

- I agree to pay the fee of \$ _____ for these records.
- I agree to pay the deposit of \$ _____ for these records and shall pay the remaining balance of \$ _____ prior to receiving the requested record(s).

Applicant

Date



CITY OF TEMPE'S COPY FEE SCHEDULE

The following applies to all public records requests:

1. After receipt of your request, you will be notified when the public records are available for inspection or pick-up. Payment is due for copies when they are picked up.
2. If paying by check, please make the check payable to the City of Tempe.
3. Charges:

- **Non-Commercial Requests:**

- E-mail Documents produced via e-mail No per page charge
- Hard Copies of Routine Records 25¢ per page
- Audio Tapes, Video Tapes, CDs, DVDs (See below)
- The City will charge the costs associated with copying and producing the information onto an audio tape, CD or DVD. The cost will be \$10.00 for the first half hour and then \$7.50 per additional half hour. There will be a minimum charge of \$10.00. However, there is no charge for finding the requested documents.
- Photographs:
 - 3 x 5 color copy \$5.00 per copy
 - 8 x 10 color copy \$10.00 per copy
 - CD of photographs (See above)
- Individual departments should be consulted for fees associated with special formats such as oversized materials, color copies, etcetera.

- **Commercial Requests:**

- The charge for commercial public records requests will be based upon: (1) the value of the reproduction on the commercial market as best determined by the public body, (2) a reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction, and (3) a portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs. A.R.S. § 39-121.03(D).

- **Custom Requests:**

- A custom request is one for a record or format that does not currently exist. Should you make a custom request and if the City determines that it will fulfill the request, the City will contact you with an estimated cost.

FOR OFFICIAL USE ONLY	
Public Records Request Received: Name: _____	Date: _____
Staff Member Responsible for Filling Request: _____	
Routed to (list departments): _____	

Follow-up with Requester (explain & date): _____	

City Attorney Approval (if necessary): Init: _____ Date: _____	
Fee Quotation Provided to Requester (if necessary): Init: _____ Date: _____	
Records Provided to Requester: Init: _____ Date: _____	
(circle one) mailed picked-up faxed	
____ Pages ____ Audio Tapes ____ Video Tapes ____ Floppy Disk	
Payment Total Received: \$ _____ Date: _____	