

Best Practices for

Fulfilling Public Records Requests

The following best practices may help reduce public records request response times and shed light on the workings of government and the official acts of public officers and employees to support an informed electorate.

The Basics

In most states, public records are presumed to be open to inspection and copying. Exceptions to this rule — defined as specific exemptions — also exist in most states; and records retention periods define when records are past their usefulness and should be destroyed. Note that some states exempt certain branches of the government; others include all branches: legislative (laws and regulation), judicial (courts), and executive (governor's office). Public records law does not require agencies to provide records if no responsive records exist; and new records do not need to be created in order to fulfill requests.

What is a Public Record?

Any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. Must be created or kept in connection with the official purpose or function of the agency. ***Content determines whether a document is a "record," not medium, format, or location. This includes:***

- ✓ Handwritten, typed, printed documents
- ✓ Maps, blueprints, and charts
- ✓ Calendars
- ✓ Photographs, videos, and audio recordings
- ✓ Tapes, optical disks, and any other medium on which stored data is recorded or preserved
- ✓ Electronic records and communications including emails, word processing documents database files, web-based information, powerpoint presentations, webinars, and social media content
- ✓ Government contractors' records
- ✓ Exclusions are usually very specific and can include: drafts, notes, preliminary documents for originator's personal use

What are Some Best Practices for Fulfilling Public Records Requests?

Here are some suggestions, gathered from a variety of public records handbooks from across the U.S.



1 Assign Responsibility

Someone in your agency should have overall responsibility for managing and retaining records.



2 Training

Everyone involved in public records requests (intake, vetting, gathering documents, reviewing/redacting, releasing, and reporting) should have adequate training and know how to manage and retain the records they own and/or touch. In fact, everyone who participates in the public records request process should be trained on your organization's policies and procedures.



3 Post Your Policies

Draft, display, and make your policies available for inspection/copying (via signage, handout, website). Be sure to include a description of your organization, established times/places where records can be accessed or requested, costs for obtaining records (if any), methods for accessing or obtaining copies, and records retention policies.



4 Requester Identification May Be Required to Determine Authorization

Sometimes requester identification should be required to obtain requested records. In most cases, the requester does not have to state a reason for the request. Your policies may include rules for residents and non-residents of your state (a few states allow restrictions for requests from out-of-state, non-citizens, and underage or incarcerated individuals). Additionally, individuals may have special access rights to records about themselves.



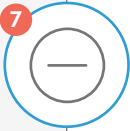
5 Clarify Scope

Require reasonable specificity from requesters in regard to the subject matter and length of time involved. If specificity is not forthcoming and excessive amounts of time and resources might be spent deciphering and responding to a request, consider using a "burdensome request" exemption when possible.



Know the Mandatory Timing Requirements

Familiarize yourself with mandatory timing requirements and comply or deny within these limits. Use **modern software** tools to help you track response times when you have multiple simultaneous requests in your care. Know the laws around enforcement and sanctions in your jurisdiction.



Understand the Exemption Code

Take time to fully understand the allowable exemption codes used in denials. Portions of records which are disclosable should be disclosed. Use **modern redaction software** to securely remove portions of public records which are exempt from disclosure; automatically creating an exemption log and defensible audit trail. Types of exemptions may include:

- Privacy and reputational interests
- Crime victims and their families
- Law enforcement records
- Court records
- Children and juveniles
- Confidentiality agreements
- Personnel records
- Records about the requester
- Correspondence with elected officials



Use the 4-Step Approach

When vetting and reviewing requests to determine if records should be released, consider using the 4-step approach:

1. Is there such a record?

YES - Proceed to step 2. **NO** - Analysis stops. No record access.

2. Is the requester entitled to access the record?

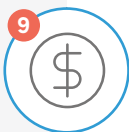
YES - Record access is permitted. **NO** - Proceed to step 3.

3. Is the requester prohibited from accessing the record pursuant to statute or court decision?

YES - Do not grant record access. **NO** - Proceed to step 4.

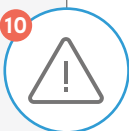
4. Does the balancing test (balance the strong public interest in disclosure against the public interest favoring nondisclosure) weigh in favor of prohibiting access to the record?

YES - Do not allow record access. **NO** - Record access is permitted



Utilize fees to recoup costs.

Your agency staff should know what records you have, where they are, and in what format they are stored. File and inventory your public records to allow for easy access over time. Maintaining a sizable volume of records is a significant commitment of resources; and protecting the investment in these records requires adequate security. Records must be kept safe from vandalism and theft as well as unauthorized access and use. Agencies should establish **security procedures**, assign responsibilities, and develop a disaster recovery plan. The structure of your records files should capture their form, content and relationship to other records. New records should be captured and stored in digital form for the best accessibility and security.



Develop an Emergency / Crisis Management Plan

Responsive Records should be preserved according to the retention periods outlined in the law. Unique challenges exist in retaining electronic records due to their fragility, susceptibility to damage or loss, and difficulties ensuring their authenticity and accessibility. Agencies should have standards for storage of optical disks and electronic records. Records should be kept for the minimum retention period listed in current approved records retention schedules. The life of a public record includes the following steps:

1. **Creation:** Records are created through employee activities and external transactions and correspondence.
2. **Distribute/Use/File (Active Stage):** active records are shared, used for decisions, evidence, and other business purposes.
3. **Storage and Maintenance (Inactive Stage):** Records that have lived past their immediate use but must remain accessible for reference.
4. **Retention and Dispositions:** Records which have met the retention time set on an approved schedule are destroyed or transferred to an archival repository.
5. **Destruction:** Records without long term value are destroyed (some confidentially).
6. **Historic Preservation:** Records determined to have long term value are permanently preserved by the appropriate archival institution.

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File Smart

Your If your state/jurisdiction allows you to charge fees for inspecting and copying records, you should do so. This allows your agency to **recoup some of the costs** associated with fulfilling public records requests. Generally, most agencies do not charge for in-person inspection. Small fees can cover the material costs of photocopying (per page to cover paper and printer costs – often \$0.10 per black/white page and \$0.25 for color) or burning records to media such as DVDs or thumb drives. Your agency may estimate these fees before performing the work; and upon acceptance of the estimate by the requesters, you can collect partial or full payment of fees prior to actually incurring the expenses.

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Follow Retention and Storage Laws

Your agency should have plans and backups of records needed to resume critical operations in the event of a disaster. This includes the ability for agency staff to **telework for business continuity** (and to avoid backlogs) during stay-at-home social distancing mandate periods such as those during COVID-19. GovQA has created a Covid-19 Crisis Assessment & Future Plan worksheet which may help your agency improve your flexibility and speed for future emergencies. You can check that out here: GovQA.com/covid-19-crisis-assessmentfuture-plan/

**Would you like more information on
public records and workflow solutions for
government agencies? Reach out!**

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