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## **Marin Emergency Radio Authority**

### **Public Records - Administrative Policy**

The California Public Records Act, Government Code sections 6250 through 6276.48 (the “Act”) provides that the public has a right to inspect and obtain a copy of most of the records retained by public agencies in the course of doing business. The Legislature has declared that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state. The public’s right to access public records is also guaranteed by the California Constitution.

The right of access is not unlimited. By law, some records are exempt from disclosure. These exemptions generally protect two interests that compete with public disclosure. Some exemptions protect an individual’s fundamental right to privacy. Other exemptions protect records from disclosure to foster efficient and effective government functions.

The Marin Emergency Radio Authority (“MERA”) maintains many public records. Unless there is a specific exemption listed in the Act or in another statute (see discussion below), most records maintained by MERA will be public records. In those cases where portions of a record are public and other portions are exempt from disclosure, staff will redact or remove the information that is exempt before disclosing the remainder of the record.

#### **WHAT IS A PUBLIC RECORD?**

As defined by the Act, public records are any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic. Writing is further defined to include any handwritten or typewritten document, photographs, pictures, drawings, audio or video recording, computer data, electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation. Finally, any maps or other depictions created using a geographic information systems (GIS), is a public record that must be produced.

#### **WHAT CONSTITUTES A REQUEST FOR A PUBLIC RECORD?**

Any member of the public, whether a Marin County resident or not, may request to view or purchase a copy of a public record. The requester does not have to give their name or other identifying information such as address or telephone number, does not have to put their request in writing and does not have to explain why they want the record. A request may be made over the telephone, in person, in writing, by facsimile or electronic mail.

Sometimes, requesters will incorrectly cite to the federal Freedom of Information Act (FOIA). Although FOIA is not applicable to MERA, MERA will respond to such requests as if the request had been made pursuant to the Public Records Act.

A requester must identify an actual public record; where requests are too vague and cannot be immediately fulfilled, staff should ask for clarification. Staff is required by statute to assist the requester in identifying the desired public records, but the Act does not require MERA to create records that do not exist or that it does not keep (e.g., a written summary of a document or a list of expenditures or events), with the exception of certain requests for the extraction or compilation of electronic data (see below).

If a person makes a request for a record that does not exist, or that is vague, MERA staff should nevertheless attempt to assist the requester in identifying existing records that contain the information being sought where possible, including records or information that is responsive to the purpose of the request, if stated. If reasonable under the circumstances, MERA staff should also describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought. In the event MERA compiles an index of its records, provision of that index to a requester satisfies MERA's obligation to assist the requester.

#### **REQUESTS FOR ELECTRONIC RECORD**

A requester may ask for identifiable public records that exist in electronic format. If the record is not exempt, MERA must make the information available in electronic format in any electronic format in which it holds the information. In the event the requester specifies a specific electronic format, MERA must produce the record in that format if the requested format is one that has been used by MERA to create copies for its own use or for provision to other agencies. If the data requested is part of a larger database or other compilation of electronic data, the requester may ask to have the data extracted or compiled, but must pay the extra costs associated with such extraction, compilation or computer programming (see duplication costs, below).

However, MERA is not required to release exempt electronic data, or to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

#### **PROCEDURE FOR COMPLYING WITH A PUBLIC RECORDS ACT REQUEST**

Request for Copies of Records: MERA staff has ten (10) calendar days to determine whether to grant the request and respond in writing to the requester with MERA's determination. The 10-day response period starts with the first calendar day after the date of receipt. For example, the determination for a request received on April 1 is due on April 11.

The 10-day response period is not the time period for complying with the request, rather it's the time period for responding to the requester with a **written** determination as to whether records responsive have been located and what, if any, information from those records is exempt from disclosure.

Fourteen-Day Extension to Respond. In four statutorily defined "unusual circumstances," MERA may take up to an additional fourteen (14) calendar days to make a determination on the request. The four unusual circumstances are the following:

- The need to search for and collect records from an off-site location.
- The need to search for, collect and examine a voluminous amount of records.
- The need for consultation with another agency having an interest in the request or among two or more components of the agency receiving the request.
- The need to compile data, write a computer program or construct a computer report to extract data.

If it becomes necessary to invoke one or more of the above listed reasons for taking additional time in which to make a determination, written notification must be given to the requester by the 10th day following their request. This written notification must state the reason for the delay and the date on which a final determination will be provided to the requester.

Content of the Determination Letter: The letter of determination informs the requester of the following:

- Whether responsive records have been identified;
- If any information is exempt from disclosure and will be redacted or withheld from the requester and the reasons for redacting or withholding the records, which can be accomplished by providing a brief generalized description of the information withheld and citing to the exemptions relied upon; or
- If the request will be denied

The letter must be signed with the name and title of the person responsible for the denial. If the request for copies is being granted, the determination letter should include a request for pre-payment of the applicable duplication costs and a statement that the copies will be made available a certain number of days after receipt of payment. Records do not have to be copied until after payment is received. If the request is to inspect records, then the letter should set forth the date after which the records will be available, and invite the requester to call or write for an appointment. MERA may not require a fee for inspection of records.

Request to Inspect Records: Public records should be available for inspection during normal business hours. Staff should monitor the inspection of original public records to ensure that MERA records are not altered, destroyed or removed from the premises.

If records are not immediately available because the records are being used by staff or are off-site, or if staff is not available to monitor the inspection, staff may ask the requester to make an appointment to view the records. The appointment date should be as soon as possible following the request.

If records need to be reviewed for exempt material or need to be redacted, staff should follow the procedure in the next section regarding “Request for Copies of Records.”

Duplication Costs: The cost for copying the records is the direct cost of duplication or a statutory fee, if applicable, and does not include staff time to research, retrieve, review or compile the records. MERA has determined that the direct cost of duplication for normal sized photocopies is fifteen cents (15¢) per page, and for electronic records copied to disc, the fee is \$10.00 per disc. If an outside duplication firm is employed to make the requested copies, the cost charged to MERA shall be passed along to the requester.

If a request for electronic records requires compilation or extraction, or computer programming to produce the record, or requires the production of an electronic record that is produced only at otherwise regularly scheduled intervals, the requester shall bear the cost of producing an electronic copy, including the cost to construct the record, and the cost of programming and computer services necessary to produce a copy. If staff produces the copy, the cost of producing such electronic copy shall be charged at the staff member’s fully burdened hourly rate, or if an outside computer programmer or computer consultant is used, at the cost charged to MERA by the programmer or consultant.

The cost of duplication for some records is set by statute. A common example of a statutory fee is the ten cents (10¢) per page charge for copies of campaign and economic disclosure statements.

### **EXEMPT RECORDS**

The Act details records that are exempt from disclosure. The following types of records are the most frequently requested documents that are exempt and therefore are not available to the public:

- Pending litigation matters;
- Personnel or medical records;
- Attorney/client privileged records;
- Preliminary drafts, notes or interoffice memoranda if they are not kept in the ordinary course of business, and the public interest in withholding the records clearly outweighs the public interest in disclosure;
- Real estate appraisals, engineering or feasibility estimates made for or by MERA relating to the acquisition of real property until such time as the property has been acquired;
- Social Security numbers; and

- Records relating to assessment of the agency's vulnerability to terrorist attacks or other criminal acts intended to disrupt the local agency's operations if prepared for or distributed in a closed session of the agency.
- Deliberative process privilege - this exemption is derived from the public interest exemption described in Section 6255. The key question is whether the disclosure of materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency.

Request for records should first be checked against the exemptions in the Act or reviewed by MERA's General Counsel. It is important not to release exempt records to the public without authorization, as release of an exempt record could waive any applicable exemptions that would justify nondisclosure, and once released, the record may have to be given to anyone who requests it, unless an exception applies. Consult with MERA's General Counsel in the event MERA staff wants to share an exempt record with another public agency or someone not within MERA's circle of privilege in order to determine whether an exception applies that would permit the record to be shared.

Section 6255 of the Act contains an exemption for records not otherwise specified in the Act, where the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. The court will carefully scrutinize use of this provision, so it should be used only in extraordinary circumstances after consultation with MERA's General Counsel.

#### **SUBPOENAS FOR RECORDS**

This administrative policy does not apply to subpoenas for records.