

# Public Records Request Handbook



Prepared by the Arizona Registrar of Contractors

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# Introduction

<b>Purpose</b>	This Policy Statement educates the public regarding procedures for processing public records requests received by the Arizona Registrar of Contractors.
<b>Policy</b>	<p>The Registrar is a public agency and values transparency. The Registrar's policy is to:</p> <ul style="list-style-type: none"><li>▪ Comply with its obligations under the Arizona public records law, and</li><li>▪ Facilitate public records requests in a timely and efficient manner.</li></ul>
<b>Contents</b>	<p>This Policy Statement outlines the Registrar's compliance with Arizona's public records law.</p> <p>This policy also informs the public about:</p> <ul style="list-style-type: none"><li>▪ The types of documents subject to disclosure; and</li><li>▪ How to request documents from the Registrar.</li></ul>
<b>Prior Public Records Requests Policies</b>	This Policy Statement supersedes all prior Registrar policies regarding public records.

# Public Records Law

## **Title 39, Chapter 1**

Arizona's public records law is located in the Arizona Revised Statutes at § 39-121 – § 39-161. These laws apply to public agencies, including the Registrar.

## **What is a Public Record?**

Arizona law defines the records which are open to the public for inspection (public records) very broadly, and it creates a presumption requiring their disclosure. *See Carlson v Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984).

A "record" is any book, paper, map, photo, or other documentary materials, including all electronic records, together with metadata (if contained in that form). *See Lake v. City of Phoenix*, 222 Ariz. 547, 218 P.3d 2004 (2009).

## **Nature and Purpose of the Record**

The nature and purpose of a document determines whether it is a public record. To qualify as a public record, a document must have been made or maintained in furtherance of an official duty. *See Griffis v. Pinal County*, 215 Ariz. 1, 156 P.3d 418 (2007).

Documents which bear a *substantial nexus* to a government agency's activities generally qualify as public records subject to disclosure. *See Salt River Pima-Maricopa Indian Community v. Rogers*, 168 Ariz. 531, 815 P.2d 900 (1991).

This means that most Registrar records will be released in response to a proper public records request. Even documents that are not created by the Registrar, but are in the Registrar's possession, may qualify as public records if they relate to a public purpose.

# Records Not Subject to Public Record Requests

## Private or Personal Documents are not Public Records

The availability of records for public inspection has limits.

Arizona's public records law only requires that public officials maintain records reasonably necessary to provide knowledge of all activities they undertake *in the furtherance of their duties*.

Thus, documents of a purely private or personal nature do not qualify as public records. This is true even if the documents are created by a government official, in a government office, using government supplies and equipment with the expenditure of government funds. See *Griffis v. Pinal County*, 215 Ariz. 1, 156 P.3d 418 (2007).

### 1. Confidentiality

Disclosure is not required where prohibited by statute, court rule, or court order.

Examples include:

- Attorney-Client communications;
- Entity identifying information, defined by A.R.S. § 13-2001;
- Social security numbers; and
- Victim information.

There are over 300 Arizona statutes that make certain information confidential. A comprehensive list of these statutes is included in the *Arizona Agency Handbook*, which is published by the Arizona Attorney General and is available on the internet at <https://www.azag.gov/agency-handbook>.

### 2. Personal Privacy

If an individual's privacy rights outweigh the public's right to know, some data may not be released. Information is private if it is (1) not freely available to the public, and (2) intended for, or restricted, to the use of a particular person or group or class of persons.

Examples include:

- Home address or home telephone numbers;

- Birth dates;
- Credit or debit card numbers;
- Insurance-account numbers and information;
- Financial-account numbers and information; and
- Floor plans or blueprints.
  - **Note:** Plans will not be released without the written permission of the owner in order to protect copyright and personal privacy interests of the occupants and owners. When possible, Registrar staff will disclose general information concerning the construction, such as total square footage and site plan.

### 3. “Best Interest”

Disclosure is not required if release of the information is not in the best interest of the public body.

Examples include:

- Background investigations;
- Records where release would inhibit public safety efforts; and
- Victim or witness personal information.

### Creating New Records to Provide Information

The Registrar does not need to create new records for the purpose of providing requested information unless the Registrar had a duty to keep a specific record but failed to do so. *Salt River Pima-Maricopa Indian Community v. Rogers*, 168 Ariz. 531, 538-39, 815 P.2d 900, 907-08 (1991).

### Statutory Exemptions

Besides the exemptions listed above, there are also statutory exemptions to the general policy of open access towards public records.



# Types of Records

## Public Records That Must Be Released

A **public record** that must be released includes the following kinds of documents:

### 1. Records Made by Public Officials

A record that is made by a public officer 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:

1. License history;
2. Substantive policy statements;
3. Bond status; and
4. List of persons convicted of unlicensed contracting. *See* A.R.S. § 32-1151.02(C).

### 2. Records Required by Law

A record that is required to be kept, or necessary to be kept, in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said, or done.

Examples include:

1. Complaints filed against licensees;
2. License application files;
3. Issued citations; and
4. Disciplinary records.

### 3. Written Records of Transactions

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:

1. Case file and Investigators' notes;
2. Job site inspection photos;
3. Audio recordings;
4. Correspondence with Complainants and Respondents; and

5. License renewals.

**4. Other Required Releases**

Certain records must be released pursuant to existing law, Attorney General Opinions, or orders issued by courts.

Examples include:

1. License disciplines;
2. Bonding histories;
3. Administrative Law Judge recommended orders; and
4. Electronic databases and computer backup tapes made or received by any governmental agency in connection with the transaction of public business

**Electronic Records & Metadata**

Requests for electronic documents are evaluated and treated like any other public records request.

When a public agency maintains a public record in electronic format, the electronic version of the record, including any embedded metadata, is subject to disclosure under public records law.

## Types of Public Records Requests

### Types of Public Records Requests

There are three types of public records requests:

1. Non-commercial public records request;
2. Commercial public records request; and
3. Custom requests.

### Non-Commercial Requests

The majority of requests the Registrar receives are non-commercial requests. These requests are made for private use, *not* for purposes of solicitation or monetary gain,

### Commercial Requests

A request for public records is “commercial” where the requestor intends to use the public record for monetary gain or solicitation purposes. *See “Commercial Requests,”* pg. 8.

### Custom Requests

The Registrar is *not* required to create documents that do not already exist in order to comply with a public records request. *See “Custom Requests,”* pg. 9.

# Commercial Requests

## **Commercial Public Records Requests**

A commercial request is when the requestor intends to use the public record for the purpose of:

1. Sale or resale, or for the purpose of producing a document for sale which contains all or part of the record, or
2. Obtaining the names and addresses from public records for the purposes of solicitation, or
3. For any purpose in which the requestor can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the requested public records.

## **News-Gathering is Not a Commercial Purpose**

Individuals who regularly gather, report, write, edit, or broadcast news to the public are not considered commercial requestors.

## **Fees for Commercial Requests**

Pursuant to A.R.S. § 39-121.03(D), the charge for commercial public records requests will include:

1. The value of reproduction on the commercial market;
2. A reasonable fee for the cost of time, equipment, and materials, used in producing the records; and
3. A portion of the cost to the Registrar for obtaining the originals or copies of the documents, photographs, or printouts.

Fees may also include costs for reproduction, searching, data maintenance, and the value of production on the commercial market. *See* A.R.S. § 39-121.03.

## **Penalty for Failing to Disclose Commercial Purpose**

A person who improperly obtains a public record for a commercial purpose without indicating the commercial purpose may be liable for penalties including triple damages and attorney's fees. *See* A.R.S. § 39-121.03.

## Custom Requests

### What is a Custom Request?

Custom requests are unique requests that ask a department to create new documents or new reports.

Arizona law does not require the Registrar to:

1. Create a new record or report;
2. Convert data or records to different mediums or formats; or
3. Perform research projects.

### Registrar's Policy is to Deny

The Registrar's general policy is to deny custom requests because of the burden that these requests impose.

### Duty to Search vs. Duty to Create

The Registrar is required to search its database to identify and produce public records.

However, Arizona's public records law does not require an agency to create a new record that compiles previously uncompiled information to respond to a public records request.

Searching an electronic database to produce existing records and data is not the same as searching an electronic database to compile information about the information it contains. *See Am. Civ. Liberties Union v. Arizona Dept. of Child Safety*, 377 P.3d 339, 346 (Ariz. App. 2016).

## Public Inspection

<b>Public Inspection</b>	All public records and other matters in the custody of a government agency must be open to inspection by any person at all times during office hours. A.R.S. § 39-121.
<b>Inspection Favored Prior to Making Broad Requests</b>	<p>In many cases, requests for public records can be narrowly tailored if the requester has a chance to review the materials and select more specific records for copying.</p> <p>This in turn can substantially reduce the fees associated with public records requests.</p>
<b>Appointment Required</b>	<p>Members of the public must schedule an appointment with the Registrar in order to review records.</p> <p>Walk-in requests without an appointment will not be honored. Appointments are required because the Registrar must examine the records and redact personal identity information before an inspection.</p>
<b>Scheduling an Appointment</b>	<p>Appointments can be made by contacting the Registrar's Public Records Office at (602) 771-6888.</p> <p>The Registrar's regular office hours are Monday through Friday, 8:00 AM to 5:00 PM, excluding legal holidays.</p>
<b>Public Inspection Fee</b>	There is no charge to review records in person. The "Fee Schedule" on page 15 of this Handbook lists all fees charged by the Registrar for processing public records requests.

## Filing a Public Records Request

<b>Instructions</b>	All requests for public records should be submitted to the Registrar according to the instructions below:
<b>Written Requests</b>	<p>Due to the Registrar's need to track and retain public records requests, all requests <i>must</i> be submitted in writing using the agency's Public Records Request Form.</p> <p>Requests are accepted any time during regular business hours, Monday through Friday, 8:00 a.m. – 5:00 p.m.</p>
<b>In-person or by mail</b>	<p>Records requests may be mailed to:</p> <p style="text-align: center;">Arizona Registrar of Contractors 1700 W. Washington Street, Suite 105 Phoenix, AZ 85007-2812</p>
<b>Fax</b>	<p>Records requests may be faxed to:</p> <p style="text-align: center;">(602) 542-1599</p>
<b>Email</b>	<p>Records requests may be emailed to:</p> <p style="text-align: center;">LegalNewMail@AzRoc.Gov</p>
<b>Pre-Payment is Required</b>	<p>On receiving a public records request, the Registrar will conduct a preliminary search of all department records and mail an invoice to the requestor. The invoice will provide a page count and total amount due for the requested records.</p> <p>After the Registrar receives payment, the records will be retrieved, prepared, and redacted.</p>
<b>Delivery</b>	A requestor can choose to have the records mailed (for a fee) or picked up in person. <i>See</i> "Fee Schedule" on page 15.
<b>Questions</b>	Questions regarding filing a public records request should be directed to the Registrar's Public Records Office at (602) 771-6888

## Processing Time for Public Records Requests

### **Time Permitted for Processing**

Please allow 15 to 20 days for a request to be processed. Please do not call to check the status of a public records request until 20 days after the request was submitted.

### **Notification**

If a request will take more than 20 days to process, the Registrar will notify the requester in writing.

### **Expedited Requests**

In most cases, requests are processed in the order they are received.

A party may request that the Registrar expedite a Public Records Request.

The Registrar may exercise its discretion to grant an expedited request when the requesting party is involved in:

- An administrative hearing, or
- A judicial proceeding.

Whether the Registrar can comply with an expedited request will depend on:

- The size of the request;
- The location of the records; and
- The current backlog of other public records requests.

### **Delays**

Some requests may take longer than others to process, because processing time depends on the nature and scope of the request, as well as the location of the records.

#### **1. Voluminous Requests**

Delays may be caused by the amount of staff time necessary to handle large volumes of records, or if due to the age of the records, the records require off-site retrieval from the Arizona State Library and Public Records facility.

#### **2. Legal Review**

In all cases, records must undergo a legal review before the release or review of materials to the public in order to avoid disclosure of information protected by statute. Confidential personal or financial information must be redacted prior to distribution.



Additionally, materials subject to proprietary right or copyrighted materials may not be available as public records due to copyright restrictions.

**Vague Requests vs. Narrowly Tailored Requests**

When requesting large volumes of records, the Registrar recommends that the requester:

- Contact the Records Officer to discuss the request; or
- Make an appointment to view the records in person prior to requesting copies.

To ensure a request for public records is processed quickly, the Registrar recommends that the requester narrowly tailor the request to the specific topic, date range, and case number.

Narrowly tailored requests will limit both the time required to process the request in addition to the cost to the requestor.

**Failure to Respond**

If a requesting party fails to respond to inquiries for clarification, cost estimates, or any other communication from the Registrar of Contractors for 30 business days, the request will be closed.

A non-responsive request may be resubmitted and will be processed as a new request.

## Public Records Request May Be Denied

### Why You Might Be Denied Access to a Record

The Registrar may deny access to:

- Part of a record, or
- The entire record itself.

The Registrar may deny access to records which:

- Are specifically exempted from disclosure under statute;
- Are compiled for law enforcement purposes and if disclosed would interfere with investigations or judicial proceedings, deprive a person of the right to a fair trial or impartial adjudication, identify a confidential source, or disclose confidential information regarding an investigation.
- If disclosed would violate confidentiality; or
- If disclosed would constitute an unwarranted invasion of personal privacy.

### Denial Requirements

A denial of access must:

- Be in writing;
- State the reason for the denial;
- Advise the Requestor of their right to an appeal.

### Arizona Ombudsman

If a request is denied, a Requestor may consider contacting the Arizona Ombudsman – Citizens' Aide for assistance.

The Ombudsman is statutorily authorized to investigate complaints relating to public access laws, request testimony or evidence, issue subpoenas, conduct hearings, make recommendations, and report misconduct, among other issues.

### Appealing a Denial

A Requestor may also appeal a denial through a special action in superior court. If the Requestor loses in superior court, they may pursue a special action in the Court of Appeals or Arizona Supreme Court, in certain instances.

## Fees for Public Records Request

### Why Does the Registrar Charge a Fee?

The Registrar charges a fee to cover the administrative costs, costs of reproduction, and postage for hard copies of records requested for non-commercial purposes. *See* A.R.S. § 39-121.01(D)(I).

Additional charges apply to public records requested for commercial purposes. *See* A.R.S. § 39-121.03.

### Subpoena Duces Tecum

Arizona law provides for reasonable costs incurred in a civil action by a witness who is not a party to the action with respect to the production of records pursuant to a subpoena. *See* A.R.S. § 12-351.

These costs are charged to the requesting party.

### Invoice

A written invoice indicating fee amounts will be provided to the record requester before the Registrar prepares the records for disclosure.

### Payment

The following payment types must be made in person:

- Cash;
- Credit Card; and
- Debit Card.

Checks or money orders should be made payable to:  
Arizona Registrar of Contractors.

**All fees must be received by the agency in advance of the release of the records.**

### Discretionary Fees

An agency may charge any fee, not established by statute, it deems appropriate for copying records, including a reasonable fee for cost of time, equipment, and personnel in producing copies of records subject to public disclosure. *Attorney General's Opinion No. 86-090*, August 25, 1986.

### Fee Limitation

The agency may not charge the *actual cost* of staff time required to search for the records.

# Registrar of Contractors' Fee Schedule

## Fee Schedule

The following establishes the ROC's fees for copies of documents and records:

<b>Fee Schedule</b>	
<b>Certified Copies of Agency Records:</b>	\$10 per case file
<b>Hard Copies of Agency Records (1-19 Pages):</b>	\$5 fee
<b>Hard Copies of Agency Records (20 or More Pages):</b>	25¢ per page
<b>Color Photographs:</b>	\$1 per photo
<b>Compact Disc of Agency Records:</b>	\$10 per CD + 10¢ per page
<b>Retrieval &amp; Refiling of Archived Records:</b>	\$5 per case file
<b>Subpoena Duces Tecum (Registrar not a party):</b>	\$5 fee + 25¢ per page
<b>Report* Fee:</b>	\$20 per report + 25¢ per page
<b>Commercial Requests:</b>	See "Commercial Requests," pg. 8.

\*The Registrar's policy is to reject requests for custom reports. This fee is for reports the Registrar already generates or possesses.

## Fee Justification

The Registrar charges a fee to recover some of the costs of reproducing public records.

This may include costs such as paper, machinery used for reproduction, and employee time to complete the reproduction.

The cost to search for the materials is not included in this charge.

## Mailing Fees

Records delivered by mail may be subject to normal mailing fees established by the United States Postal Service.

## Fee Waiver

The Registrar will not waive any fee under this Fee Schedule absent extreme mitigating circumstances.

# Records Retention Policy

## **The Duty to Preserve Documents**

A.R.S. § 39-121.01(B) requires that:

All officers and public bodies shall maintain all records ... reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from the state or any political subdivision of the state.

## **What are Retention Schedules?**

Records retention schedules are required by A.R.S. § 41-151.14(A)(3).

Retention schedules are timetables that identify the length of time an agency must keep a record before final disposition.

## **Final Disposition**

When records meet their final disposition, according to a retention schedule, they are either destroyed or transferred to the State Archives.

## **General Retention Schedules**

General schedules are common to all agencies and ensure that standardized retention periods are followed. Some general schedules apply to the ROC.

## **Custom Retention Schedules**

Custom schedules are only permitted when an agency creates record series that are unique to that agency. The Registrar follows several custom retention schedules.

## **Retention Policy for Drafts**

The ROC's policy is to retain only the final version, rather than multiple drafts, of a document.

## **How Can I Locate a Retention Schedule?**

Both general and custom schedules are published online and can be found at <http://www.azlibrary.gov/arm/retention-schedules>.

## **Retention Schedules and Public Records Requests**

The ROC's policy is to properly dispose of all records after their designated retention schedule has elapsed. Therefore, records that have been designated for final disposition may be unavailable for a public records request.