

**MCMULLIN AREA GROUNDWATER
SUSTAINABILITY AGENCY
CALIFORNIA PUBLIC RECORDS ACT POLICY**

POLICY NO. 2020 - 05

DATE ADOPTED: June 3, 2020

1.0 Background

The California Public Records Act (Gov't Code §§ 6250 et seq.) ("PRA") addresses the public's right of access to government agency records.¹ The PRA provides a broad policy favoring disclosure of public records, providing that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov't Code § 6250.) Consistent with this right, "every person has a right to inspect any public record," subject only to the express limitations contained in the PRA. (Gov't Code § 6253.) This statutory right is also an express constitutional right (Cal. Const. art. 1, Sec. 3) which provides that those laws, such as the PRA, that further the public's rights of access to information concerning the conduct of the people's business, shall be broadly construed, and those laws that limit the right of access shall be narrowly construed.

2.0 Purpose

The purpose of this California Public Records Act Policy ("Policy") is to establish guidelines by which the McMullin Area Groundwater Sustainability Agency ("MAGSA") commits itself to procedures and guidelines for complying with the PRA and to making any public records available for public inspection upon proper request by a member of the public. Specifically, this Policy outlines measures MAGSA commits to implement in order to maintain public access to information related to MAGSA's conduct of the people's business. As a Groundwater Sustainability Agency ("GSA") properly organized pursuant to the Sustainable Groundwater Management Act ("SGMA") MAGSA is authorized to adopt rules, regulations, ordinances, and resolutions for purposes of fulfilling its obligations as a GSA. (Water Code § 10725.2(b).) Likewise, MAGSA's Bylaws (Section 10.02(b)) provide that MAGSA's Board of Directors may adopt procedures for the maintenance of its records. MAGSA adopts this Policy pursuant to this authority.

The following Policy provides a general overview of the PRA including practice notes to assist the public and MAGSA's employees with application of the PRA's provisions. In addition, MAGSA's General Manager and Legal Counsel are available to provide assistance with any and all PRA requests submitted to MAGSA.

¹ All statutory references are to the California Government Code unless otherwise indicated. The PRA was modeled from the federal Freedom of Information Act, which may be used in interpreting the PRA.

3.0 Scope

This Policy applies to MAGSA's commitment to maintain public access to information related to the conduct of MAGSA's business pursuant to the PRA and SGMA, including but not limited to, the implementation and enforcement of MAGSA's GSP, MAGSA's public and open meetings, the adoption and levy of MAGSA's fees and charges, and MAGSA's public contracts.

4.0 Definitions

- a. "Member of the Public": Refers to any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment. (Gov't Code § 6252(b).)
- b. "Person": Refers to any natural person, corporation, partnership, limited liability company, firm, or association. (Gov't Code § 6252(c).)
- c. "Public Record": Refers to 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 characteristics. (Gov't Code § 6252(e).)
- d. "Writing": Includes any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or 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 combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Gov't Code § 6252(f).)

5.0 Request to Inspect or Copy Public Records

- a. MAGSA's public records are open to inspection at all time during the MAGSA's regular business hours. Every person has a right to inspect a public record unless one of the PRA's exception applies. (Gov't Code § 6253(a).)
 - i. With the exception of providing records that consist of electronic data (see Chapter 7.0 of this Policy) MAGSA is not required to create records or reports that do not otherwise exist in order to respond to a PRA Request.
 - ii. The following examples are likely public records subject to the PRA: (1) emails kept in the ordinary course of business; (2) data maintained in electronic form; and (3) voicemails if kept in the ordinary course of business.
 - iii. During any inspection of records, a MAGSA employee, Director or authorized consultant must be present at all times to ensure the integrity of the original records.
 - iv. If records contain material that is partially confidential, then the confidential portions must be redacted by making a copy of the record, blacking out the confidential portions and then making another copy for inspection. See Chapter 8.0 of this Policy regarding exemptions. All direct costs

of redacting and copying may be charged to the public records requester. See Chapter 6(g) of this Policy regarding costs. However, MAGSA will not charge any fee for public inspection.

b. A request to inspect and/or copy may be either oral or in writing and must reasonably describe an identifiable record. (Gov't Code § 6253(b).)

i. The request must describe public records clearly enough to permit MAGSA to determine whether writings of the type described in the PRA request are under MAGSA's control. However, the PRA request may describe a writing by its content without precisely identifying the documents sought.

c. If the request does not describe an identifiable record, MAGSA staff is required by law to assist the requester in making a focused and effective request that reasonably describes identifiable records. (Gov't Code § 6253.1.) Staff must assist the requester by doing all of the following to the extent reasonable under the circumstances:

i. Assist the requester to identify records and information that are responsive to the request or to the purpose of the request. This requirement is satisfied if staff is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the records (Gov't Code § 6253.1(a)(1) & (b));

ii. Describe the information technology and physical location in which the records exist (Gov't Code § 6253.1(a)(2)); and

iii. Provide suggestions for overcoming any practical basis for denying access to the records or information sought (Gov't Code § 6253.1(a)(3)).

iv. Note: The size of the request for disclosure is not the measure whether the request reasonably describes the identifiable record. The issue is whether the records may be located with reasonable effort.

v. Note: MAGSA's duty to assist the member of the public in identifying specific records and information does not apply to a request for public records if: (1) MAGSA makes the requested records available pursuant to Government Code section 6253 (Gov't Code § 6253.1(d)(1)); (2) MAGSA has determined that the request should be denied based on one of the exemptions to the PRA pursuant to Government Code section 6254 (Gov't Code § 6253.1(d)(2)); or (3) MAGSA makes available an index of its records (Gov't Code § 6253.1(d)(3)).

6.0 Timelines for MAGSA's Response to Requests

a. A PRA request for inspection or copying of public records may be oral or in writing. The response given to the PRA request differs according to the circumstances and should be handled as follows:

i. If the PRA request can be granted in its entirety, an oral or written response detailing when the records may be inspected is permitted;

ii. A written response to a PRA request is required only when: (1) an oral or written request for records will be denied, in whole or in part, or (2) MAGSA needs an extension of time beyond ten (10) days to respond to the PRA request (see discussion below in this Policy).

iii. Note: It is MAGSA's policy, but not legally required, that any response to a PRA request should be in writing. It is important to have written documentation as to the MAGSA's response to any type of PRA request maintained for future reference. See Attachments A-D for sample responses.

b. Upon request for a copy of records (whether oral or written), MAGSA shall, within ten (10) days of receipt of the request, determine whether all or part of the request seeks copies of disclosable public records in the possession of the MAGSA and shall promptly notify the requestor of the determination and the reasons therefore. (Gov't Code § 6253(b).)

c. In unusual circumstances, the 10-day time limit may be extended by providing written notice from the Board of Directors of MAGSA or their designee to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension of more than fourteen (14) days. (Gov't Code § 6253(c).)

i. "Unusual Circumstances": Refers to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

A. The need to search for and collect the requested documents from field facilities or other contractor establishments that are separate from the office processing the request (Gov't Code § 6253(c)(1));

B. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request (Gov't Code § 6253(c)(2));

C. 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 agency having substantial subject matter interest therein (Gov't Code § 6253(c)(3)); and

D. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data (Gov't Code § 6253(c)(4)).

d. When MAGSA sends its determination, and if it determines that the request seeks disclosable public records, the MAGSA's response must state the estimated date and time when the records will be made available. (Gov't Code § 6253(c).)

e. There is no timeline for producing the records. However, produced records must be made "promptly available" without delay or obstruction. (Gov't Code § 6253(b).)

f. An exact copy of the record must be provided. Any portions which are exempt by law must be deleted.

g. If the determination is to disclose the record and a copy is requested, the copy must be promptly provided upon the payment of direct costs of duplication. (Gov't Code § 6253(b).) Only direct costs of duplicating records may be recovered. (*Id.*) Direct costs include only the actual personnel cost and equipment expense for the duplication process. It does not include the time spent to locate, retrieve and re-file the records.

i. Note: If a requester requests copies, either MAGSA or the requester may copy the records. If MAGSA makes the copies, it must first require the requester to pay for the estimated copying costs. As a general rule, the copying costs are \$ 0.45 per page. If the requester chooses to copy the records by means of a copy service, a MAGSA employee must be present at all times to ensure the original records are maintained intact. It is important to collect the cost for reproduction prior to providing the records to the requester.

h. If the determination is to deny disclosure of the record, MAGSA must advise the requester in writing and provide the basis for the denial. For example, the document may not be a public record as defined in the PRA. However, if the document is a public record, the agency must show the record is exempt either under a provision of the PRA or that the facts of the particular case justify withholding the record because the public interest served by not making the record public clearly outweighs the public interest served by the disclosure. (Gov't Code § 6255.)

i. Note: If a denial is issued in whole or in part, Government Code section 6253 requires the notification of the denial to set forth the names and titles or positions of each person responsible for the denial.

ii. Disclosure of Responses to RFPs: The responses submitted by bidders/proposers pursuant to an RFP are public records once a recommendation from the RFP review committee has been made to the MAGSA Board of Directors.

7.0 Electronic Record

a. As a general rule, in response to a PRA request, MAGSA is not required to create a record or report that does not already exist. A different rule applies for information maintained in electronic format.

b. Government Code section 6253.9 states that “unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure . . . that is in an electronic format shall make that information available in an electronic format when requested by any person.” (Gov't Code § 6253.9(a).) Therefore, MAGSA must search records that are in electronic format when responding to PRA requests.

c. In addition, MAGSA must:

i. Make the information available in any electronic format in which it holds the information (Gov't Code § 6253.9(a)(1));

ii. Provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies (Gov't Code § 6253.9(a)(2));

iii. The cost of duplication shall be limited to the direct cost of producing a copy of the record in an electronic format. (Gov't Code § 6253.9(a)(2).) However, Government Code section 6253.9(b) states that the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

A. In order to comply, MAGSA would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals (Gov't Code § 6253.9(b)(1));

B. The request would require data compilation, extraction or programming to produce the record (Gov't Code § 6253.9(b)(2)).

iv. Note: It is important to note that nothing in Government Code section 6253.9 requires MAGSA to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format. (Gov't Code § 6253.9(c).) If the request is for information in other than electronic format, and the information is also in electronic format, the agency may inform the requester that the information is available in an electronic format. (Gov't Code § 6253.9(d).) MAGSA may not make information available only in an electronic format. (Gov't Code § 6253.9(e).) MAGSA is not required to release an electronic record in the electronic form in which it is held by MAGSA 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. (Gov't Code § 6253.9(f).)

8.0 California Public Records Act Exemptions

a. Government Code sections 6254 et seq. contain a compilation of records exempt from mandatory disclosure. Exemption from the PRA does not mean they are not public records or that disclosure is outright prohibited. It only means that if records fall within one of the PRA's exemptions, MAGSA is not required to disclose the record. However, MAGSA *may* disclose the record if it so chooses, so long as disclosure is not otherwise prohibited by law.

b. Note: Once it discloses records that are otherwise exempt, MAGSA may not refuse to disclose such records to others (however this waiver does not apply to certain disclosures of exempt records, e.g., those made pursuant to legal proceedings or the Information Practices Act, etc.). (Gov't Code § 6254.5.)

c. Records subject to exemption include, but are not limited to:

i. Preliminary drafts, notes, or interagency or intra-agency memoranda that are not required by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure. (Gov't Code § 6254(a).)

A. Note: This exemption does not apply to records customarily retained on file. Drafts are not exempted if staff normally keeps copies of the report or document is final even if a decision is not. Where a draft contains both facts and recommendations, only the recommendation may be withheld.

ii. Records pertaining to pending litigation to which MAGSA is a party. (Gov't Code § 6254(b).)

A. This exemption protects records specifically prepared by MAGSA or its legal counsel for use in pending or anticipated litigation. Records generated in the ordinary course of MAGSA's business, which may be relevant in future litigation to which MAGSA may be a party, are not exempt under this exemption. Exempt records include but are not limited to privileged attorney-client communications and work-product generated by MAGSA in anticipation of litigation. It does not include the claims submitted under the Tort Claims Act, depositions from previously concluded litigation or settlement agreements.

iii. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted violation of personal privacy. (Gov't Code § 6254(c).)

A. The primary purpose of this exemption is to protect purely personal information unrelated to the conduct of MAGSA's business or intimate details of personal and family life. This exemption does not apply to salaries or other compensation of higher-level staff, educational and employment history, current job assignment or reclassification. Disciplinary records *may* be considered a public record pursuant to the PRA under the following circumstances:

(1) Where the complaint contains serious charges and there is reasonable cause to believe the complaint is well founded, the records may be public records if the public interest in the records outweighs the employee's privacy rights, due to the nature of the employee's position. Legal Counsel should be contacted for advice related to any request for disciplinary records.

(2) Discipline need not be imposed or the charges upheld for the records to be subject to disclosure, as long as the complaint was well founded.

(3) If discipline was imposed or the charge upheld, the records may be subject to disclosure even if the resulting discipline was minor, such as a letter of reprimand.

(4) If the employee is a high level public official, the records may be subject to disclosure even if the allegations are not well founded, unless the allegations were so unreliable that the accusations had to be false.

(5) No records should be released until the investigation is complete.

(6) Personal information, such as name, home address, phone numbers, and job titles of persons interviewed for or mentioned in the reports must be redacted prior to release of the records.

(7) Prior to the release of records, the affected employee must be given written notice that MASGA intends to release the records, in order to give the employee an opportunity to seek a court order barring the release.

B. Employment contracts are not exempt.

iv. Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures.

v. Records that are privileged or subject to other statutory access restriction.

A. This exemption incorporates other confidentiality provisions.

B. This includes records that are subject to attorney-client privilege. It also includes records that are subject to the privilege for official information received by MAGSA in confidence.

vi. Government Code sections 6275-6276.48 enumerate several additional exemptions. There are hundreds of statutory exemptions and other independent bases for confidentiality.

vii. Catchall Exemption: In addition to the express exemptions from disclosure, the PRA contains a “catch-all” exemption that permits a public agency to withhold its records from inspection when “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov’t Code § 6255(a).)

A. In relying on this exemption, the burden is on MAGSA “to justify the need for non-disclosure.” This test is applied on a case-by-case basis. Mere assertion of public interest in non-disclosure is not sufficient. There must be facts supporting that interest. For example, various records pertaining to security information may be withheld under the weighing mechanism of public interest in disclosure versus public interest in withholding such records, as well as pursuant to records specified by various governmental agencies as being confidential security information. (See Gov’t Code § 6254(a), (f), (k) and (aa).)

9.0 Waiver of Exemptions – Selective Disclosure is Prohibited

Public officials may not pick and choose the recipient of disclosure. When a record loses its exempt status because it has been disclosed, it then becomes available for public inspection, and any person has the right to inspect. (Gov’t Code § 6254.5; *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 656-57.) When a public record which is otherwise exempt is disclosed, the disclosure constitutes a waiver.

a. Note: Exempted records listed in Government Code section 6254 may be disclosed by MAGSA. However, if MAGSA discloses any record which is otherwise statutorily exempt from disclosure under the PRA, MAGSA forever waives the right to claim at a later date that the identical records are exempt from disclosure.

b. Additional Note: There is no waiver if disclosure of an otherwise exempt record is made through, but not limited to, the following:

- i. Legal proceedings (through discovery process or pursuant to court order) (Gov't Code § 6254.5(b));
- ii. As otherwise required by law (*id.*); or
- iii. To any governmental agency which agrees to treat the disclosed material as confidential (*id.* at subdv. (e)).

10.0 Failure to Provide File or Record

When denied access to public records, any person may institute judicial proceedings for injunctive relief, declaratory relief, or in mandamus to enforce a right to inspect such records if inspection has been wrongfully denied. The court will determine whether the public record must be disclosed or is exempt from disclosure pursuant to express provisions of the PRA or by balancing how the public interest is best served. (Gov't Code § 6259(a).) Failure to provide public records may not also constitute a violation of a constitutional right guaranteed by article 1, Section 3 of the California Constitution. Costs and attorney's fees must be awarded to a plaintiff who prevails in a PRA judicial action. A plaintiff may "prevail" and thus entitled to fees even if the records are released, after an initial refusal prior to judgment. (*Belth v. Garimendi* (1991) 232 Cal. App. 3d 896.) On the other hand, if the judicial action is determined to be frivolous, the court must award the public agency costs and attorney's fees. (Gov't Code § 6259(d).)

11.0 Role of Legal Counsel

MAGSA's legal counsel may be consulted by MAGSA employees when responding to a PRA request. However, at a minimum, it is MAGSA's policy that legal counsel should be consulted in the following circumstances:

- a. When a PRA request is submitted by an attorney or is submitted in conjunction with a claim or related to ongoing litigation;
- b. When MAGSA staff cannot meet the timeline for providing a response as set forth in Chapter 6.0 of this Policy;
- c. When MAGSA staff believes a PRA request, or a portion thereof, must be denied;
- d. When MAGSA staff has a questions as to whether certain records are legally exempt;
- e. When a PRA request is submitted by the media or an advocacy group;
- f. When a PRA request seeks records from more than one agency.

Note: When a PRA request seeks records from more than one agency, each agency should attempt to designate a single point of contact and coordinate a joint response on behalf of MAGSA.

ATTACHMENT A

[EXAMPLE] EXTENSION TO RESPOND TO PRA

Dear _____ :

The McMullin Area Groundwater Sustainability Agency (“MAGSA”) is in receipt of your California Public Records Act request dated _____. I am responsible for responding to that request on behalf of MAGSA.

The records that you have requested [must be retrieved from different offices and locations] and/or

_____ require staff to search for, collect and examine a large number of records; and/or

_____ require consultation with another agency; and/or

_____ require MAGSA to compile data, write programming language or a computer program or to construct a computer report to extract data.

Accordingly, MAGSA will be unable to make a final determination of whether your request seeks copies of disclosable public records in the possession of MAGSA by _____ (the 10th day from MAGSA’s receipt of your request). MAGSA will respond to your request within 14 days from the above date, i.e, by _____.

ATTACHMENT B

[EXAMPLE] RESPONSE TO PROVIDING RECORDS

Dear _____:

This letter is in response to your Public Records Act request dated _____. The McMullin Area Groundwater Sustainability Agency (“MAGSA”) has determined that it has disclosable public records that you identified in your request. The records will be available for your inspection by _____. Please contact _____ to arrange for a mutually agreeable date for inspecting those records.

If you desire copies of the records, please provide a check in the amount of \$_____, payable to the McMullin Area Groundwater Sustainability Agency. Copies of the records will be forwarded to you upon receipt of the check.

ATTACHMENT C

[EXAMPLE] RESPONSE TO PRA FOR ELECTRONIC RECORD

Dear _____ :

The McMullin Area Groundwater Sustainability Agency (“MAGSA”) is in receipt of your California Public Records Act request dated _____. The information requested in is not ordinarily contained in any existing report. It requires data compilation, extraction or programming in order to create such a report. In accordance with Government Code section 6253.9(b), the MAGSA will create a report generating the requested information upon payment of the costs incurred by MAGSA in constructing the reports, including the necessary cost of programming and computer services. It is estimated that it will take ____ hours to create the report at an anticipated cost of \$ _____. Upon receipt of a check in the amount of \$ _____ made payable to the McMullin Area Groundwater Sustainability Agency, MAGSA will commence preparation of the requested report.

ATTACHMENT D

[EXAMPLE] RESPONSE DENYING PRA REQUEST

Dear _____:

In response to your California Public Records Act request dated _____, the McMullin Area Groundwater Sustainability Agency (“MAGSA”) has determined that it will not produce the following records [identify] on the basis that _____ [state specific exemption] or in consideration of the public interest served in withholding the records, which outweighs the interest in disclosure, as determined by _____, MAGSA’s _____ [title of person making determination].
[Note: specific public interest in nondisclosure must be identified].