

# **General Policy and Rules and Regulations of TCWD**

## **Appendix "E" Public Records Access Policy**

### **1.0 PUBLIC RECORDS ACCESS POLICY**

The California 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 this State. The California Public Records Act, Government Code Section 6250, et. seq. ("Public Records Act"), generally requires public records to be available to the public upon request. Trabuco Canyon Water District has established the following policy and guidelines to ensure that members of the public fully understand and are afforded an opportunity to use their right to inspect and obtain copies of Public Records (as defined). A copy of this policy will be provided free of charge upon request.

### **2.0 DEFINITIONS**

- a. "District" means the Trabuco Canyon Water District or any employee authorized to act on its behalf.
- b. "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
- c. "Public Records" include any Writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by the District regardless of physical form or characteristics. For purposes of this Policy, Public Records do not include those Writings that are exempt from disclosure, as described in Section 4.0.
- d. "Writing" means 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.

- e. "Member of the public" means 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. Notwithstanding this definition, nothing in this Policy shall be construed to limit the ability of the District's elected or appointed members or officers from accessing the Public Records of the District on the same basis as any other Person, nor shall this definition limit the ability of elected or appointed members or officers to access Public Records permitted by law in the administration of their duties.
- f. "State" means the State of California.
- g. "The District's Secretary" means the District's duly appointed and serving Secretary, or, in the absence of the Secretary, an Assistant Secretary.
- h. "Policy" means this Public Records Policy as adopted and amended from time to time.

### **3.0 PROCEDURES FOR ACCESSING PUBLIC RECORDS**

#### **3.1 When Public Records May Be Inspected**

The Public Records of the District shall be open to inspection, except as otherwise provided by this Policy and the Public Records Act, during the District's regular business hours (7:00 a.m. to 4:00 p.m., Monday through Friday, excluding Holidays), and every Person has the right to inspect such Public Records. Any reasonably segregable portion of a Public Record will be made available for inspection by any Person requesting the Public Record after the deletion or redaction of the portions thereof that are otherwise exempted from disclosure.

The inspection of Public Records is subject to a rule of reason as to time and duration and must be consistent with the efficient functioning of the District's offices. The District requests that any Person who wishes to

inspect Public Records telephone the District's business office and schedule an appointment with the District's Secretary's office to inspect the Public Records. It is the District's policy that Public Records not exempt from disclosure by State law will be open for public inspection with the least possible delay and expense to the requesting Person.

The inspection of such Public Records shall take place at the District's business office or at such location designated by the District, and Public Records so produced shall not be removed from the District's business office premises without the express prior written consent of the District's Secretary.

### **3.2 Procedures for Obtaining Copies of Public Records**

#### **3.2.1 Submission of Requests**

Requests for copies of Public Records shall be submitted in writing to the District's Secretary, and must include all of the following information:

1. A statement that the Person is requesting information under the Public Records Act;
2. A clear and specific description of the information being requested. If possible, the requester should identify dates, subjects, titles, or authors of the documents requested; and
3. The requester's contact information, including name, address, telephone number, and, if available, a fax number or e-mail address.

Such requests must be submitted in person, by United States mail, or by facsimile transmission during normal business hours to the District's business offices, to the attention of the District's Secretary. Requests received

after normal business hours by facsimile transmission shall be treated as being received by the District on the following business day. It is the responsibility of the requesting Person to confirm the District's receipt of such a facsimile transmission request.

The District's Secretary shall have the authority to proscribe a standard form for Public Records request and require its use. The form shall include a statement relating to the District's current copy costs and requirement that requestor pay for copying before work is done.

### **3.2.2 Assistance Identifying Public Records Sought**

Whenever a Person is unable to make a clear and specific request for desired Public Records as required by Section 3.2.1, the District shall, to the extent reasonable under the circumstances:

1. assist the Person to identify those Public Records that are responsive to the request or to the purpose of the request, if provided;
2. describe the information technology and physical location in which the Public Record exists; and
3. provide suggestions for overcoming any practical basis for denying access to the Public Records sought.

The District's responsibilities under this Section will be deemed satisfied if the District is unable to identify the Public Records sought after making a reasonable effort to elicit additional clarifying information from the Person making the request.

### **3.2.3 Time for The District's Initial Response**

Upon receipt of a properly completed and submitted request for copies of Public Records, the District's Secretary shall within 10 days determine whether the request, in whole or in part, seeks copies of Public Records in the District's possession that are disclosable under the Public Records Act, and shall promptly notify the Person making the request of the District's determination, reasons for such a determination, and an approximate date and time when such requested Public Records that may be disclosed by the District will be made available. Responses to written requests shall be in writing.

In unusual circumstances, the 10-day time limit may be extended up to 14 days by written notice by the District to the requester, setting forth the reason for the time extension. Unusual circumstances include:

1. The need to search for and collect the requested records from field facilities or other establishments that are separate from the District business office;
2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;
3. 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;

4. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

#### **3.2.4 Records in Electronic Format**

Unless otherwise prohibited by law, the District shall, upon request, make available any Public Record in electronic format, the disclosure of which is not exempt under the Public Records Act, in any electronic format in which the District holds the information or in the format requested if the requested format is one that has been used by the District to create copies for its own use or for provision to other public agencies.

The District is not required to reconstruct a record in electronic format if it no longer has the record available in electronic format. If an electronic record is not requested, but the record is available electronically, the District may inform the requester that the record is available in that format. The District shall not be required to release an electronic record in the electronic form in which it is held by the District 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.

#### **3.2.5 Fees for Copies of Records**

A request for a copy of an identifiable Public Record or information produced therefrom must be accompanied by payment of fees to cover the direct costs of duplication, which will be based upon the current cost per standard reproduced page. In some cases the District may estimate the copy costs for requested Public Records. The District's Secretary may elect to waive such costs in certain cases, at the sole discretion of the District's Secretary.

The District shall not commence work on any document copying or reproduction of any requested Public Record until the costs or cost estimate has been deposited with, and received by, the District. Upon completion of the copying process, the Person making the request shall be notified that the copies are available for delivery. Unless otherwise agreed to by the District, delivery shall be made at the District's business office. Upon delivery of the requested Public Records, the Person making the request shall pay the amount shown for all copies and labor provided and shall sign a receipt for all copies received.

#### **3.2.5.1 Fees for Records in Electronic Format**

The requester will be responsible for the direct cost of producing a copy of a Public Record in electronic format, and will also bear the costs to construct a Public Record and the programming and computer services necessary if the District is required either to:

1. produce a copy of an electronic record and the Public Record is one that is produced only at otherwise regularly scheduled intervals, or
2. perform data compilation, extraction, or programming to produce the Public Record.

#### **3.2.6 District's Response to Requests**

In responding to Public Record requests, the District will generally advise the Person submitting the request, by telephone or by

mail, as appropriate, of:

1. the location, date, and time at which the requested Public Records may be inspected;
2. the cost of providing copies, if copies of Public Records are requested;
3. which of the records requested are not subject to disclosure as Public Records pursuant to the applicable provisions of the Public Records Act.

#### **4.0 RECORDS NOT OPEN TO PUBLIC INSPECTION**

In balancing the public's right to access Public Records with the recognized individual right of privacy, statutory limitations and requirements, and the need for the District to be able to competently perform its duties, the Legislature has established certain categories of records, which may be exempt from public disclosure or inspection.

A complete list of statutory exemptions can be found in the Public Records Act, Government Code Sections 6254 and 6275, et. seq. Documents or records not subject to disclosure are not "Public Records" within the meaning of this Policy. Public Records exempt from disclosure that pertain to the District include, but are not limited to, the following:

1. Preliminary drafts, notes, or inter-agency or intra-agency memoranda which are not retained by the District in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;
2. Records pertaining to pending litigation to which the District is a party, or to claims made to the District pursuant to Government Code Section 810, et. seq., until such litigation or claim has been finally adjudicated or otherwise settled;
3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of



personal privacy;

4. Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person;
5. Contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the District relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. The law of eminent domain, however, shall not be affected by this provision;
6. Documents prepared by or for the District that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the District's operations and that is for distribution or consideration in a closed session;
7. Records of which the disclosure is exempt or prohibited pursuant to provisions of Federal or State law, including, but not limited to, provisions of the Evidence Code relating to privilege.
8. Memorandums submitted to the District's Board of Directors by its legal counsel pursuant to Government Code Sections 11126(e) or 54956.9, until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled;
9. Computer software, which includes computer mapping systems, computer programs, and computer graphic systems, developed by the District shall be subject to the provisions of Government Code Section 6254.9, or any successor section thereto, providing that such software is not a Public Record under the Public Records Act and that the District may sell, lease, or license the software for commercial or noncommercial use.
10. As provided by Government Code Section 6254.16, the District is prohibited from disclosing the name, credit

history, utility usage data, home address, or telephone number of any of the District's customers, except that such information shall be provided upon request: (1) to an agent or authorized family member of the Person to whom the information pertains; (2) to an officer or employee of another governmental agency when necessary for the performance of its official duties; (3) upon court order or the request of a law enforcement agency relative to an ongoing investigation; (4) upon determination by the District that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies; (5) upon determination by the District that the utility customer who is the subject of the request is an elected or appointed official with authority to determine the District's utility usage policies, provided that the home address of an appointed official shall not be disclosed without his or her consent; or (5) upon determination by the District that the public interest in disclosure of the information outweighs the public interest in nondisclosure.

The District also possesses the discretion to claim an exemption from public disclosure records which do not qualify for a specific exemption under the California Public Records Act but for which the District may determine the public interest served by not making the record public clearly outweighs the public interest served by disclosure. Public Records subject to exemption may nevertheless be made available for inspection if waiving the exemption will serve the public interest, as determined by the District on a case-by-case basis. However, the District's determination to disclose a record, which may otherwise be exempt from disclosure, does not constitute a waiver with respect to any other records.

## **5.0 INTERPRETATIONS OF POLICY**

The District's Secretary may, from time to time, issue written interpretations of this Policy to assist in complying with the requirements of the Public Records Act or the District's administration of this Policy where not in conflict with the Public Records Act.

## **6.0 DISPUTE OF DISTRICT'S RESPONSE TO PUBLIC RECORDS ACT REQUEST**

Any Person may appeal a decision by the District, or the District's Secretary, not to provide access or inspection to any Public Record to the General Manager or the District Board of Directors. The General Manager or Board of Directors may consider such request for access/inspection and may, in their complete discretion, grant such access or inspection, except where such records or documents must be kept confidential pursuant to State or Federal law.

Additionally, under the California Public Records Act, Government Code Section 6258, any Person may seek injunctive or declarative relief in any court of competent jurisdiction to enforce the right to inspect or to receive a copy of any Public Record.

- 7.0** The District is prohibited from posting the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual. **It is a MISDEMEANOR for any person to knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet, knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual.** (Government Code Section 6254.21.)