



## Fact Sheet: Public Records Requests

From time-to-time, the Division of Parks and Outdoor Recreation (the Division) receives requests to inspect and copy public records. Unless specifically provided otherwise (by law, regulation or recognized privilege), the public records of all public agencies, including the Division, are open to inspection by the public under reasonable rules during regular office hours. Although the state has its own statutes and regulations dealing with the inspection and copying of public records, sometimes the requestor cites the Freedom of Information Act (FOIA), which is federal law and does not generally apply to state agencies. Nevertheless, all requests for public records must be promptly addressed whether the requestor cites state law, FOIA, or no law at all. It is the policy of the executive branch to disclose public records and to provide copies of those records in an expeditious manner. Disclosing public records and making copies of them upon payment of the required fees, is a public agency obligation. (AS 40.25.110; 2 AAC 96.200)

“Public records” means books, papers, files, email, phone logs, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format of physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency. (AS 40.25.220)

### **Are all public records subject to the procedures of 2 AAC 96, the regulations regarding public access to public information?**

No. Records that are readily available for public inspection are not subject to the procedures of 2 AAC 96. “Readily available” means available during state business hours in an agency’s office or public library. Most Division records (e.g., state land plats and natural resource case files) are readily available for public inspection and are not subject to these procedures. The division does not have to maintain a log of written requests for public records that are readily available. However, if records that are defined as readily available are withheld or access is denied, then the records are no longer considered to be readily available for public inspection and the procedures of 2 AAC 96 must be followed. (2 AAC 96.100(b))

### **Is the division required to compile or summarize its public records or manipulate its data to create new records in response to a request for public records?**

No. A public record is available for inspection and copying in the format in which the division maintains or disseminates the record. A public agency is not required to compile or summarize its public records in response to a request for public records. The division may manipulate its data to create electronic services and products if the division can do so without impairing its

functioning, the data is protected, and the requestor pays for the cost of developing the service or product. (2 AAC 96.210)

### **May the division request a requestor to sign a “File Review Request” form before inspecting public records?**

Yes. Although the division may not request a justification or explanation of need or intended use, the division may inquire whether the requestor is a party, or represents a party, involved in litigation with the state to which the requested record is relevant. (2 AAC 96.220) By signing the form, requestors certify that they are not a party to litigation, nor are they acting on behalf of any party to litigation. If a requestor refuses to sign, the best thing to do is to refer the requester to the Division of Law to originate their request. (2 AAC 96.220)

### **Must the division do anything special if the requestor is involved in litigation with the state?**

Yes. If the person making the request is a party or represents a party to litigation with the state or a public agency, the division shall inform the requestor to make the request in accordance with applicable court rules. (AS 40.25.122, 2 AAC 96.220)

Generally, it is a good idea to separate all records involved in litigation, during the course of the litigation. Public records involved in litigation remain public records **except** to a party to litigation or representing a party to litigation.

**Are copies of public records free?**

No. The division has prescribed the standard unit charge for copies of public records. Except in the case of news organizations, fees must be paid **before** the records are copied. The standard photocopy fee (except as noted elsewhere in 11 AAC 05.030(a) is \$.25 per sheet. Please note that as of July 1, 2018, charges for the first \$5.0 copies are waived; also, AS 40.25.110(d) allows a public agency to waive a fee of \$5 or less **if** the fee is less than the cost to the agency to arrange for payment. Other applicable charges, like larger size and color copies and digital copy of an electronic screen page can be found in 11 AAC 05.030. The division may also set a reasonable limit on the number of copies of materials prepared for routine distribution, such as blank forms and applications. (2 AAC 96.240, 2 AAC 96.300, 2 AAC 96.360)

If the production of records for one requester in a calendar month exceeds five person-hours, the division shall require the requester to pay the personnel costs required during that time to complete the search and copying tasks. (AS 40.25.110(c))

**Must a request for public records be in writing?**

No. An oral request for records is considered a valid request. However, if the request involves a variety of records, the division may require that the request be submitted in writing. For most of the division’s records, an oral request is less time consuming to handle, because it does not require a written response. An oral request is deemed denied if not granted within five working days. A requestor’s only remedy if the oral request is denied is to make a written request. If there is uncertainty whether the records requested are disclosable, require the request be submitted in writing. (2 AAC 96.310(b))

**Must the division assist in the identification and description of the records sought?**

Yes. While a requestor must describe the public records sought in sufficient detail to enable the division to locate the records, the division must make reasonable efforts to assist the requestor in formulating the request and identifying the public records requested. Within ten working days of receipt of the request, the division must notify the requestor that the request cannot be processed until additional information is furnished. Time limits for processing the request do not begin to run until the division receives a sufficient description of the records. (2 AAC 96.315)

**Must the division maintain a log of the requests that it receives for material that is not “readily available.”?**

Yes. Each division shall maintain a log of each written

request that it receives for public records that are not “readily available.” (If the request is not a CTS, also notify the commissioner’s office of the request.) The log must include the date the request was received, the name of the requestor, a notation on whether notice of receipt was sent to the requestor, and the date that additional information was requested. If an office of the division receives a request for records that it does not maintain, the office shall promptly forward the request to the office or division responsible. For example, requests for personnel records should be referred to the Division of Administration, Division of Personnel, the office responsible for maintaining those records. (2 AAC 96.320)

**Is there a time limit to respond to a request for public records?**

Yes. The division has five working days to answer an oral request and ten working days to answer a written request if the public records are not readily available. (2 AAC 96.325)

**There is a need to search for and collect the requested records from multiple sections or there is a need to search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request. May the ten-working-day period be extended?**

Yes. However, remember that if the public records are readily available, the ten-working-day period does not apply. Even so, the division will make reasonable efforts to let the requestor know within a ten-day-working period that the records are available for public inspection in either the division’s office or public library during state business hours. For public records that are not readily available, the division may extend the basic ten-working-day period for an additional ten working days under the specific circumstances set out in 2 AAC 96.325(d) by providing notice to the requestor within the basic ten-working-day period. (2 AAC 96.325)

**May the division deny a request for public records in its possession?**

No. The division may not deny a request for a public record in its possession unless nondisclosure of the record is authorized by a federal law or regulation; a state law; a constitutional right-of-privacy; or some other privilege, exemption, or principle recognized by the courts, which authorizes non-disclosure. Some examples of exceptions to disclosure are: oil and gas confidentiality laws; the Privacy Act of 1974, which protects social security numbers from disclosure; the attorney-client privilege, which shields some communications between an assistant attorney general and a division official in certain matters; and personal information contained within otherwise disclosable records that are protected by a constitutional right to privacy.

Whether a requested record is subject to or exempted from disclosure must be made on a case-by-case basis. Some records will be disclosable only after the nondisclosable information is segregated and withheld. If there is uncertainty whether the records requested are disclosable, require the request be submitted in writing and have the request reviewed by a supervisor, and, if necessary, by the attorney general's office. (2 AAC 96.330, 2 AAC 96.335)

**Must the division keep some information confidential upon the request of the person supplying the information?**

Yes. Upon the request of the person supplying the information, the following records shall be kept confidential: the name of the person nominating or applying for a competitive disposal of land; all geological, geophysical, and engineering data supplied; cost data and financial information; applications for rights-of-way or easements; request for information or applications by public agencies for land. (AS 38.05.035(a)(8))

When the division requests personal information that may be included in a public record, the division shall give the person a written notice at the time of the request that states among other things that the information may be subject to inspection and copying under AS 40.25.110 - 40.25.120 and that a person may challenge the accuracy or completeness of the information under AS 40.25.310. (AS 40.25.300, AS 40.25.350)

**Is the division required to disclose every unfinished document, such as rough drafts of letters or decisions?**

No. The deliberative process or executive privilege does exempt some documents from disclosure. This privilege has been recognized by federal courts looking at FOIA requests and is limited to predecisional documents prepared by governmental agencies that reflect the decision-making or "deliberative process" of the agency. The purpose of the privilege is to allow free and open discourse on a proposed course of action before a final decision is made. The privilege is limited and is meant to shield only those documents that reveal the deliberative or mental process of the decision-making.

A November 5, 1992, (redated for printing, January 1, 1993) memorandum from Assistant Attorney General Jenifer Kohout that discusses the deliberative process or executive privilege in detail states that the type of documents that may be covered by the privilege include advisory opinions, deliberations, recommendations, draft documents, proposals, suggestions, and other pre-decisional communications which are part of the policy-making process. Communications not protected by the privilege include purely factual observations; final, designated, formal, or binding opinions; statements of policy; interpretations to staff; or anything else that constitutes the "working law" of the agency and affects the public. That same memorandum outlines the proper procedure to claim the deliberative process privilege.

**SUMMARY:**

- Most of the division's records are "readily available" for public inspection and not subject to the procedures of 2 AAC 96.
- With few exceptions, copies of records, special reports or compilations of records cannot be made without advance payment from the requestor.
- Answer all requests for public records as soon as possible. Answer oral requests for public records that are not "readily available" within five days or require that the requests be submitted in writing. Answer written requests for public records that are not "readily available" within ten days and log in the request.
- Remember that most of the division's records are public; there must be a law, privilege, exemption, or principle recognized by the courts, which authorizes non-disclosure. If there is a question whether a record is disclosable, check for applicable statutes and regulations. If there is still a question, consult with a supervisor, director's office staff or the attorney general's office.
- Keep confidential records separate from readily available public records. Use the "File Review Request" form and follow any applicable court procedures for discovery for records involved in litigation.