

# Los Angeles County Children and Families First Proposition 10 Commission

SUBJECT:  Responding to Public Records Act Requests	Policy Number: <b>P-3501</b>
	Effective Date: 11/12/15
	Supersedes: 01/12/12, 11/06/01
Initiating Authority: Communications and Marketing Department	Page <b>1</b> Of <b>7</b>

## I. PURPOSE

This policy sets forth the guidelines and procedures pertaining to the public review of First 5 LA records, and provides guidance to staff when responding to requests for public records.

## II. APPLICATION

This policy applies to all First 5 LA public records.

## III. POLICY

First 5 LA is a public organization. First 5 LA affirms the public's right to access its public records in compliance with the California Public Records Act, Government Code 6250 through 6276.48 (the "Act"), and California Constitution art. I, sec. 3(b). First 5 LA will comply fully with the Act and the California Constitution. This policy shall be interpreted and enforced in a manner that is consistent with those laws, and nothing in this policy is intended nor shall it be construed to conflict with the terms of the Act or the California Constitution.

## IV. PROCEDURES FOR COMPLYING WITH A PUBLIC RECORDS ACT REQUEST

The California Public Records 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 categories of 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.

First 5 LA 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 First 5 LA 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.

Special rules apply for requests for Fair Political Practices Commission (FPPC) Filings. Those rules are addressed below under "FPPC Filings."

### **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.

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

Any member of the public, whether a Los Angeles County resident or not, may request to view or pay for a copy of a public record. Though staff can ask for the information in response to a public records request, 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 First 5 LA, First 5 LA will respond to such requests as if the request had been made pursuant to the Act.

A requester must identify an actual public record; requests that are too vague cannot be fulfilled. Staff is required by statute to assist the requester in identifying the desired public records. Except for certain requests for the extraction or compilation of existing electronic data (see below), the Act does not require First 5 LA 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).

If a person makes a request for a record that does not exist, or that is vague, First 5 LA 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, First 5 LA 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 First 5 LA compiles an index of its records, provision of that index to a requester satisfies First 5 LA's obligation to assist the requester.

### **RESPONDING TO REQUESTS FOR RECORDS**

Request to Inspect Records: Disclosable public records should be available for inspection during normal business hours. Original First 5 LA records shall remain in the custody of First 5 LA at all times, ensuring their integrity and accessibility. Inspection of original First 5 LA files/records by a requester must be supervised by a First 5 LA employee to ensure that First 5 LA 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, need to be redacted, or will be withheld in their entirety because they are exempt from disclosure, staff should follow the procedure in the next section regarding "Request for Copies of Records."

Request for Copies of Records: First 5 LA staff has ten (10) calendar days to determine whether to grant a request for public records and respond in writing to the requester with First 5 LA'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 have been located and what, if any, information in those records is exempt from disclosure.

Content of the Determination Letter: If any information is exempt from disclosure and will be redacted or withheld from the requester, or if the request will be denied, the determination letter must so state and provide 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 statutory exemptions relied upon.

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. First 5 LA may not require a fee for inspection 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. First 5 LA has determined that the direct cost of duplication for normal sized photocopies is 29 cents (29¢) per page, and for electronic records copied to disc, the fee is \$10.00 per disc. Please note: First 5 LA will not collect the duplication fee if under 50 pages. If an outside duplication firm is employed to make the requested copies, the cost charged to First 5 LA will 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. If an outside computer programmer or computer consultant makes the copy, the cost charged to First 5 LA by the programmer or consultant shall be charged to the requester.

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. See FPPC Forms, below.

In all cases, a requester must pay for the records before copies of the disclosable records are released.

Fourteen-Day Extension to Respond: In four statutorily defined “unusual circumstances,” First 5 LA 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 10<sup>th</sup> 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.

Format of record: If a requester does not specify the format requested, it shall be assumed that the requester is seeking a paper copy of the record. If a requester asks for an electronic copy but does not specify format, it shall be assumed that the requester is seeking a portable document format (PDF).

Requests for Electronic Records: A requester may ask for identifiable public records that exist in electronic format. If the record is not exempt, First 5 LA 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, First 5 LA must produce the record in that format if the requested format is one that has been used by First 5 LA 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, above).

First 5 LA 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.

Records Not Subject to Disclosure (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:

- Preliminary inter-agency drafts and notes customarily discarded (including stenographic notes and tapes used for transcription of a typed document and then discarded or reused), and interagency or intra-agency memorandum which are not retained in ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure.

NOTE: Care should be taken to keep such notes and working papers separate from files containing records that are considered public and to label personal working files as such.

- Records pertaining to pending litigation to which the Commission is a party or claims made pursuant to Government Code Section 810 et seq., until such litigation or claim has been finally adjudicated or otherwise settled.  
This includes records created in anticipation of litigation before the litigation or claim is filed.
- Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- Test questions, scoring keys, and other examination data used to administer examinations for employment.
- The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the Commission relative to acquisitions of property, or prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreements obtained.
- Records, the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to provisions of the Evidence Code relating to privilege.
- Attorney-client privileged communications, which include confidential communications exchanged between Commission legal counsel and either Commission personnel, or other parties with whom the Commission has a confidential relationship. Some consultants may fall within the Commission's scope of privilege; contact First 5 LA's General Counsel if you have any question regarding whether a record is an attorney-client privileged communication.
- Social Security numbers.
- Any record that is either exempt from disclosure or not a public record under applicable law.
- Any record exempt under the balancing test. 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 First 5 LA's General Counsel.

A request for records should first be checked against the exemptions in the Act and discussed with the First 5 LA's General Counsel. It is important to remember that over the years, the Legislature has added, changed, or even dropped specific exemptions, and the courts are continuing to opine on the scope of records covered by each exemption. Therefore, it is important to consult with legal counsel before releasing or withholding records.

Protecting Exempt Records; Waiver: 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 First 5 LA's General Counsel in the event First 5 LA staff wants to share an exempt record with another public agency or someone

not within First 5 LA's scope of privilege in order to determine whether an exception applies that would permit the record to be shared.

### **SPECIAL RULES FOR REQUESTS FOR FPPC FILINGS**

No later than the second business day following the day on which it was received, reports and statements filed pursuant to the Political Reform Act (Gov't Code § 81000 et seq.) must be made available for public inspection. First 5 LA may not require names or other identifying information from persons requesting to inspect or receive copies of such reports and statements.

Government Code Section 81008 sets a statutory fee for copies of FPPC forms, and First 5 LA cannot charge more than the statutory fee:

- Copies of reports and statements shall be provided at a charge of ten cents (\$0.10) per page.
- For reports and statements that are five or more years old, a five dollar (\$5) per request retrieval fee will be charged. A request for more than one report, statement, or report and statement at the same time shall be considered a single request.

### **V. RESPONSIBILITIES**

The Director of Communications and Marketing is responsible for managing First 5 LA's response to Public Record Act requests as well as responses to requests for FPPC filings. This includes coordinating the written response with the Executive Department, legal counsel and other Department Heads as necessary, as well as coordinating the requests for inspection of records.

At the direction of the Director of Communications and Marketing and under his/her supervision, any duty imposed on the Director of Communications and Marketing by this policy may be performed by another First 5 LA employee.

Any employee who receives a request for public records by mail or email must immediately forward it to (a) the Director of Communications and Marketing (b) his/her Department head, if the recipient is not a Department head, and (c) retain a copy so that he or she may assist with completing the request.


In the event this Policy does not specify a fee for a particular type or format of copy, the Director of Finance will set the fee based upon direct cost of duplication, or when permitted by the Act, the cost to produce a copy of the record (e.g., Gov't Code § 6253.9(b)).

The fee may be waived if the request for reproduction is a minimal one, or if it is in First 5 LA's best interest to do so. The Director of Finance or designee will make the determination as to waiving of fees.


### **VI. REFERENCES/LEGAL AUTHORITY**

California Government Code Section 6250 et seq.  
California Government Code Section 81008.

VII. APPROVALS

  
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Gabriel Sanchez, Director of Communications and Marketing,  
Initiating Authority

11-12-15  
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Date

  
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John Wagner, Chief Operating Officer

11/12/15  
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Date

  
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Kim Belshé, Executive Director

11/12/15  
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Date

***Approved by Board of Commissioners November 12, 2015***