



California Department of Food and Agriculture
Division of Measurement Standards
California Type Evaluation Program

Safeguarding Proprietary Information Procedures

In the course of the type evaluation process, the Division of Measurement Standards (DMS), California Type Evaluation Program (CTEP) often becomes privy to proprietary information related to the device, manufacturing techniques, etc. This information is the property of the applicant. CTEP is only the custodian of the information. All DMS employees with knowledge of proprietary information are bound to protect and limit access to applicant's information and data developed during the type evaluation process, to properly authorized organizations or individuals (e.g., only the applicant or National Type Evaluation Program (NTEP) staff, if the applicant is seeking a NTEP Certificate of Conformance).

As required by state law, the Department of Food and Agriculture has a Public Records Act Policy (see attached). Government Code § 6254(n) establishes that statements of personal worth and financial data required by DMS to establish qualification for a Certificate of Approval are exempt from disclosure under the Public Records Act.

Purpose

It is the policy of the California Department of Food and Agriculture (Department) to comply with the California Public Records Act (the Act or PRA).

This policy establishes the Legal Office procedures for processing a PRA request. It addresses the law, the request, the record, the response, fees, and exemptions to disclosure.

Authority

Article 1, Section 3, California Constitution

The California Public Records Act (Government Code §§ 6250 *et seq.*)

Information Practices Act of 1977 (Civil Code §§ 1798 *et seq.*)

State Department's Investigations and Hearings (Government Code § 11183)

Executive Order S-03-06

The Act and Other Access to Records Law

The Act, reads in part, "...access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The Act ensures that every citizen has the right to inspect and/or obtain a copy of any public record. The requester is not required to provide a reason for requesting a public record. As a result, once a document is deemed a public record, its possible use is immaterial to its release.

Generally a public record is defined as "any writing containing information relating to the conduct of the public's business," which includes any means of recording information upon any format of communication or representation. (Government Code § 6252(e))

The Department policy is to disclose all public records unless they are specifically exempted under the law.

PRA requests should not be confused with subpoenas duces tecum which are court orders and can reach records exempt from disclosure under the Act. All subpoenas must be served directly to the Legal Office.

The Freedom of Information Act (FOIA) is the federal version of the Act that applies only to federal agencies. However, if a request is received stating it is pursuant to FOIA, it should be treated as a PRA request.

Public Records Act Requests

Responsibilities

Legal Office

The Legal Office is responsible for receiving and responding to PRA requests and educating CDFA employees on the requirements of the Act. After the initial request is received by the Program, all subsequent correspondence with the requester is handled by the Legal Office. The staff counsel assigned to review the documents will determine whether they contain confidential or privileged information. If so, redaction will be performed by the Legal Office.

All Employees

Immediately upon receipt, the PRA request should be e-mailed to the Legal Office Legal Assistant and copied to General Counsel. If the request was e-mailed, forward the e-mail. If the request was received via the United States Postal Service (USPS), include a copy of the date-stamped envelope. Program should retain a copy and begin collecting any responsive documents, but should not redact any information or alter the documents in any way. Any subsequent correspondence received from the requester should be forwarded to the Legal Office immediately for reply.

Any concerns about confidentiality or proprietary information should be summarized in the submission e-mail. The staff counsel assigned to review the documents will address those concerns and redact confidential or proprietary information before the documents are released.

If more than ten days is needed to collect the responsive documents, inform the Legal Assistant via e-mail as soon as possible.

The Request

Although the Act does not require a request for records be in writing, doing so facilitates accuracy. Therefore, if a verbal request is received, the requester should be asked to submit the request in writing. USPS, e-mail, or fax is acceptable.

All requests must reasonably identify the desired records. If the request is so vague or overbroad that it is impossible to identify the desired records, the agency is required to assist the requester to make a focused and effective request that reasonably describes an identifiable record or records. (Government Code § 6253.1(a)) The agency shall, to the extent reasonable under the circumstances, do the following:

Public Records Act Requests

1. Assist the requester to identify records and information that are responsive to the request or to the purpose of the request, if stated;
2. Describe the information technology and physical location in which the records exist; and
3. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These requirements are deemed to have been satisfied if the agency is unable to identify the requested information after making a reasonable effort to obtain additional information that will help identify the record or records.

These requirements do not apply if the agency makes available the requested records, determines that the request should be denied and bases that determination solely on an exemption pursuant to Government Code § 6254, or makes available an index of its records.

The Response

The Legal Office shall handle all responses to PRA requests. The Legal Office staff shall notify the appropriate program staff that a request has been received and what documents are required in response.

The Program will provide PDF copies of the requested records via e-mail to the Legal Office to determine whether the records are responsive to the request, and are appropriate for disclosure or exempt from disclosure. The Legal Office will prepare the response and communicate any necessary information to the requester.

Records are open to inspection by the public during the normal office hours at the location where the records are kept. However, access may depend on the availability of staff, whether the records are kept on site, the kind of records, whether the records have to be reproduced or redacted, and a number of other factors.

Whether the request is by telephone, in person, or by correspondence, the requester should have no expectation that he or she will be able to inspect and copy records immediately.

Public Records Act Requests

Response Time Frame and Notice of Determination

Within ten days from receipt of the request for records, the agency must determine whether the request, in whole or in part, will be disclosed. A special two-day rule applies to conflict of interest statements.

In certain circumstances, the response may be extended for an additional 14 days upon written notice, setting forth the reasons for the extension and the date on which the determination is expected to be made. Acceptable circumstances for an extension includes, but is not limited to:

- 1) The need to search for and collect the requested records from field facilities that are separate from the office processing the request;
- 2) The need to search for, collect, and examine a voluminous amount of separate and distinct records demanded in a single request; or
- 3) The need to consult with another agency having a substantial interest in the determination or the need to consult with various divisions of the Department having substantial interest in the determination.

If a determination is made that the records are disclosable, the notice must state the estimated date and time when the records will be made available.

If a determination is made that the records are not disclosable, the notice must state the reasons why, and the name and title of the person making the determination. (Government Code §§ 6253, 6255)

Determining Whether Records May Be Released

When a request for a reasonably identifiable record is received, the Legal Office shall determine if the public record is exempt from disclosure. Public records must be disclosed unless exempt under Government Code §§ 6254, 6275 *et seq.*, or other applicable law. Disclosable public records are those which: a) relate to the public's business; b) do not meet one of the exceptions to disclosure; and c) are kept in the ordinary course of business.

Records maintained by the Department are subject to numerous exemptions. Common exemptions are those that protect investigatory records, attorney client privileged communications and trade secrets.

Only those records kept in the ordinary course of business are subject to disclosure. For example, if a compiled list of growers is not used in the normal course of business, then it may not be disclosable.

Public Records Act Requests

If a document should have been purged under the current Records Retention Schedule, but is present at the time of a request, the proper practice is to produce it, if it is not otherwise exempt. If in doubt, consult the Legal Office.

Additionally, records that contain confidential information should be identified as such at the time it was provided to the Program by the original holder/supplier of the information, if possible. The supplier of confidential information may be notified of public records requests concerning such information. In limited situations, where the confidential nature of a record is in doubt, the Department may advise the supplier of the Department's intent to disclose and, as a courtesy, may give ten days for the supplier to obtain a court order.

If a supplier of records wishes the records returned, the supplier must request the return of such records *at the time the records are provided* to the Department. Alternatively, at the time the records are provided to the Department, the supplier may authorize their destruction by the Department after they are no longer of use to the Department. Requests for the return or destruction of records may not be made or granted to avoid producing the requested records pursuant to a PRA request.

Forms that are used for collecting confidential data should be designed so that any public information can be easily segregated from confidential information. Special care should be given to computer records which need to be properly formatted and secured.

Records that are exempt from public disclosure may be released to other governmental agencies that agree to treat the records as confidential and respect their protected status. The information so obtained by another governmental agency shall be used only for purposes that are consistent with existing law and shall be disclosed only to employees or officials of the agency who are authorized in writing by the head of the agency to obtain it. (Civil Code § 1798.24; Government Code § 6254.5(e)) Government agency requests for exempt records must be approved by the Legal Office and the Secretary.

Fees

The fees for photocopies of records requested under the Act shall be 20¢ per page, plus an additional \$1.00 if the records are copied to a CD. Fees for other media (e.g., computer disks, tape, etc.) are not standardized and will be charged at the actual cost. The Legal Office may exercise discretion in waiving or reducing

Public Records Act Requests

the fees as it deems appropriate when the combined total is \$5 or less. Payment should be paid to the order of "CDFA Cashier". Records will be released upon payment to the Legal Office of the fees and the actual cost of postage and packaging.

Distribution

Distribution of this policy includes Executive staff, Division Directors, Branch Chiefs, Administrative Assistants, Executive Assistants, and all office locations.

Questions regarding this policy may be directed to the Legal Office at (916) 654-1393.