

PUBLIC RECORDS POLICY

The City of Bisbee is required by the Arizona Public Records Law (A.R.S. § 39-121 *et seq.*) to make public records available to those who make a request for the records. Arizona law requires all officers and public bodies to maintain records reasonably necessary to provide an accurate accounting of their official activities and of any government funded activities.

1. DEFINITIONS.

- a. Public record: According to A.R.S. § 41-1350, records means “all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to section 41-1348, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein.”
- b. Public body: According to A.R.S. § 39-121, a public body is defined as “the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from the state or any political subdivision of the state, or expending monies provided by the state or any political subdivision of the state.”
- c. Requestor: Any person, corporation, partnership, limited liability company, firm, or association.

2. PURPOSE.

The purpose of this policy is to comply with the applicable requirements of the Arizona Public Records Law, which requires that all public bodies maintain records and make them available for public inspection. To the extent that there is any conflict between this policy and Arizona law, such conflict is inadvertent, and the City will follow Arizona law.

3. PROCEDURE.

Requests for public records are preferably submitted in writing using the City’s Public Records Request form, but that is not a strict requirement. The submission of a written request is not required and a request cannot be denied merely because of the absence of a written request. However, this written procedure enables staff to more easily process and track the completion of the request. Pursuant to A.R.S. § 39-171, the City is required to provide the name, telephone number and email address of an employee or department that is authorized and able to provide the requested records, or able to forward the request to an employee or department that is authorized and able to provide the requested records. The City Clerk is the designated

representative for accepting and processing public records requests.

The requestor is asked on the form to clearly state the specific documents requested, and whether the records will be used for a commercial purpose, in which case the City can charge additional amounts for the records. Other than asking the requestor to name the specific documents requested and whether the request is for a commercial purpose, the City is not allowed to ask the reason for the request.

Commercial purpose is defined by statute to mean “the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record.”

Pursuant to A.R.S. § 39-171, since the City does not maintain a centralized online portal for the submission of public records requests that provides an automatic receipt of submission, upon receipt of a public records request, the City must reply within 5 business days acknowledging the receipt of the request. As discussed below, this does not mean that the request has to be fulfilled within 5 business days, only that the receipt of the request must be acknowledged.

Pursuant to A.R.S. § 39-121, the public has a right to inspect (*i.e.* view in person) public records. “Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.” Pursuant to A.R.S. § 39-121.01, the public has a right to obtain copies of public records, subject to reasonable copy fees. Thus, once a public records request has been received and processed, the requestor should be informed that the requested records are available for review and copying at City Hall during normal business hours. For digital records, the City is not obligated to email those records and can make them available for review on a digital device at City Hall – such as a designated laptop that can be used to view the records. The requestor has the right to download those digital records to their own recording device at no charge. The City may provide the record in its original format and will not be required to translate or analyze the requested information.

The City is not required to create a document or provide a compilation of documents. Requests that require that a document be created or that analysis be conducted in order to respond the request are not subject to A.R.S. § 39-121. Only requests for an identifiable, existing record will be fulfilled under this policy.

Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production. The meaning of “promptly” will vary depending on the circumstances of the request. Once received, staff will review the request and respond within a timely manner. If the record is available and appropriate for public inspection, staff should promptly make the requested records available for review. What constitutes “prompt” will depend on what is reasonable under the circumstances. Some

requests will require greater time for the custodian of the records to review and determine whether certain information should be redacted from the records. Records requiring more research and compilation, or if the request involves numerous documents, may result in a longer response time. This also may result in a fee being charged to cover staff time spent on the research and compilation, as may be permitted under Arizona law.

Upon receipt of a public records request, the request should be forwarded to all individuals or departments that would have records responsive to the request. Those individuals or departments should be instructed to promptly search for and return to the City Clerk all public records responsive to the records request.

Upon receipt of the responsive records, the records will be reviewed and redacted as applicable under Arizona Supreme Court guidelines to protect confidentiality rights of individuals. Redactions can be made by the City Clerk or forwarded to the City Attorney. Any complex or sensitive documents should be submitted to the City Attorney for review to ensure appropriate redactions or made or a determination if the document is required under applicable law to be withheld. Some records and information within the records may not be shared, even if requested, because of important exceptions to Arizona Public Records law that may apply to a request. When confidential and public information are commingled in a single document, a copy of the document may be made available for public inspection with the confidential material redacted. Documents may be exempt from inspection for a number of reasons, and thus should not be disclosed. The City Attorney should be consulted when determining whether or not a document is exempt from disclosure. However, examples of such exempt documents include, but are not limited to, the following:

- a. *Proprietary*: Data owned or licensed by third parties, or a hybrid of data owned or licensed by a third party.
- b. *Confidentiality*: This refers to records that are made confidential by law, not by the agency.
- c. *Privacy*: Disclosure would invade privacy AND that would outweigh the public's right to know.
- d. *Best interest of the state (or public body)*: The public body would be seriously impaired in the performance of its duties.
- e. *Privilege*: For example, communications with attorneys or matters that relate to the deliberative process of a legislative body are privileged.
- f. Any exception provided in the Arizona Revised Statutes or recognized by the courts of Arizona.

Upon request, the City shall provide an index of any records or categories of records that have been withheld and the reasons the records or categories of records have been withheld. The index is not required unless specifically requested and the City Attorney should be consulted

when such request is made.

4. FEES.

There is no cost associated with viewing records at City Hall during normal business hours. After review at City Hall, records that exist in an electronic format that are able to be sent electronically to the requestor also may not incur a fee unless the volume is unreasonably burdensome, or special costs are required to accommodate the request. If the requestor would like to receive photocopies of the records, a fee may be applied per page based on the size of the paper and whether the documents are copied in color or black and white. Requestors wishing to receive copies of records by mail may be charged the cost of postage.

Any applicable fees are due prior to release of the records.

As noted above, additional sums may be charged if the request is for a commercial purpose. Refer to the City's fee schedule for the appropriate charges and any questions concerning such charges should be referred to the City Attorney.

5. SUBPOENAS.

A.R.S. § 39-121 does not cover records requested through a court subpoena. All subpoenas will be referred to the City Attorney for consideration and response.

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For reference, the full text of A.R.S. § 39-121 is provided below:

ARIZONA REVISED STATUTE REGARDING PUBLIC RECORDS (A.R.S. 39.121 *et seq.*) For complete text of Title 39, go to [ALIS Online](#).

39-121. Inspection of public records

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.

39-121.01. Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index

A. In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.
2. "Public body" means this state, any county, city, town, school district, political

subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.

B. All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state.

C. Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to sections 41-151.15 and 41-151.19.

D. Subject to section 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of such records shall promptly furnish such copies, printouts or photographs and may charge a fee if the facilities are available, except that public records for purposes listed in section 39-122 or 39-127 shall be furnished without charge.

2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person. The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order. This paragraph shall not be construed by an administrative tribunal or a court of competent jurisdiction to prevent or require an order compelling a public body other than an agency to furnish an index. For the purposes of this paragraph, "agency" has the same meaning prescribed in section 41-1001, but does not include the department of public safety, the department of transportation motor vehicle division, the department of juvenile corrections and the state department of corrections.

3. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while

the public record is in the possession, custody and control of the custodian of the public record and shall be subject to the supervision of such custodian.

E. Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production pursuant to subsection D, paragraph 2 of this section.

39-121.02. Action on denial of access; costs and attorney fees; damages

A. Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

B. The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed. Nothing in this subsection shall limit the rights of any party to recover attorney fees, expenses and double damages pursuant to section 12-349.

C. Any person who is wrongfully denied access to public records pursuant to this article has a cause of action against the officer or public body for any damages resulting from the denial.

39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition.

A. When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being furnished the statement, the custodian of such records may furnish reproductions, the charge for which shall include the following:

1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body.

B. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the governor requesting that the governor by

executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose, the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty (30) days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.

C. A person who obtains a public record for a commercial purpose without indicating the commercial purpose, or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose, or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose, or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose, shall, in addition to other penalties, be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount it would have been charged for the public record had the commercial purpose been stated, plus costs and reasonable attorney fees, or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

D. For the purposes of this section, “commercial purpose” means the use of a public record for the purpose of sale or resale, or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale, or the obtaining of names and addresses from public records for the purpose of solicitation, or the sale of names and addresses to another for the purpose of solicitation, or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

39-121.04. Public access to law enforcement records depicting certain witnesses or crime victims; victim rights

A. In a special action brought pursuant to this article for the release of any record created or received by or in the possession of a law enforcement or prosecution agency that relates to a criminal investigation or prosecution and that visually depicts the image of a witness under eighteen years of age or a victim as defined in section 13-4401, the petitioner shall establish that the public's interest in disclosure outweighs the witness's or victim's right to privacy.

B. A victim whose image is depicted in a record described in subsection A of this section has the right to be present at and to be heard in any action brought pursuant to this article for the release of records described in subsection A of this section.

