

BOLIVAR PENINSULA SPECIAL UTILITY DISTRICT

**POLICY FOR REQUESTS FOR INFORMATION MADE
UNDER THE TEXAS PUBLIC INFORMATION ACT**

POLICY AND PURPOSE: It is the policy of the Bolivar Peninsula Special Utility District (the "District") to grant the public access to information regarding its records, affairs and transactions in accordance with the Texas Public Information Act as set forth in Chapter 552 of the Government Code. This Policy sets forth the appropriate procedure for responding to requests for information made under the Texas Public Information Act (the "Act").

OFFICER FOR PUBLIC INFORMATION: The President of the Board of Directors is the District's designated Public Information Officer. The General Manager will act as the agent and is thus responsible for overseeing compliance with the Act. Any questions regarding the Act, this Policy, or a specific request for information should be directed to the General Manager or the President of the Board of Directors.

GENERAL DEFINITION OF PUBLIC INFORMATION: "Public Information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by the Bolivar Peninsula Special Utility District; or (2) on behalf of the Bolivar Peninsula Special Utility District and the District owns the information or has a right of access to it. The general forms in which public information may exist include, but are not limited to, book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map and drawing, or a voice data or video representation which is held in computer memory.

EXAMPLES OF PUBLIC INFORMATION: Many different types of information are required to be released under the Act. The following is a nonexhaustive list of information common to the District that usually must be released under the Act:

- a) most information contained in the personnel file of District employees;
- b) almost all letters and memoranda, including drafts that are retained;
- c) almost all completed reports, audits, evaluations, and investigative reports;
- d) notes that are not required to be maintained, but which are kept by a District employee or Board Director regarding some aspect of the course and scope of his or her employment or duties;
- e) most information contained in an account, voucher, or contract;
- f) staff manuals and written instructions to staff that affect a member of the public;
- g) information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of the District; and

- i) information that a District employee promises to keep confidential, but is not considered confidential by law.

EXAMPLES OF EXCEPTIONS TO THE ACT: Many types of information may not be disclosed to the public under the Act and must be kept confidential in accordance with the Act, some other law or court order. The following is a nonexhaustive list of information common to the District that may not be disclosed:

- a) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;
- b) information contained in a book or publication that is commercially available to the public or made available to the public as a resource material, such as a library book;
- c) an audit working paper or draft audit; and
- d) certain personnel information requested in writing to be maintained confidential by the employee (i.e. personal address, social security number and other information permitted by the Act to be held confidential at the employee's written request)

RESEARCH NOT REQUIRED: The Act only requires that documents in paper or electronic form be provided to a requestor. District employees are not required to perform substantive research; prepare answers to questions; or complete research surveys.

PROCEDURES FOR RESPONDING TO REQUEST FOR INFORMATION: The following procedures apply to all requests for information regardless whether the request states it is made pursuant to the Public Information Act.

- a) **Request Must Be In Writing:** Requests for information must be in writing before the District is required to respond under the Act. If an oral request for information is received, the requestor must be informed of the need to submit the request in written form. The written request must be submitted to the District office in person, by mail or by facsimile transmission.
- b) **Forward Request to General Manager.** It is imperative that District employees record the date requests for information are received and immediately forward them to the General Manager. District employees who receive a request shall not make any decision concerning whether requested information is confidential or withhold information, but shall forward the request to the General Manager.
- c) **Right to Seek Clarification.** If it is unclear what information is being requested, the District may ask the requestor to clarify his or her request. If a large amount of information has been requested, the requestor may be informed how to narrow the scope of the request. However, in accordance with the Act, District employees or Directors may not ask why the information is being requested or about its intended usage.

- d) **Deadline for Taking Action on Request.** Action must be taken on a request for information within ten business days of initial receipt of the request by any District employee. The General Manager will determine the appropriate action to take and will review the request and determine whether the requested information must be released under the Act.
- e) **Deadline for Providing Public Information.** If the information constitutes public information under the Act, then within a reasonable time after the request is received, normally ten business days, the requestor should be allowed access to view the information at the District office or be provided copies of the requested information through first class United States mail. Note: the requestor has the right to determine whether to view the information at the office or to be provided copies of the information. If the information cannot be accessed for inspection or duplication within ten business days either because it is in active use as defined by the Act, in storage, because of the number of documents involved or because of the nature of the request, the District shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information should be available.
- f) **Notifying Requestor of Estimated Charges.** A party requesting copy of public information may not be aware of the time and cost involved in complying with the request. When the cost associated with responding to a request exceeds forty dollars (\$40.00) the District must notify the requestor, in writing, of the estimated costs (itemized) and an anticipated completion date. The notice also must inform the requestor that failure to inform the District whether he or she wishes to proceed with or narrow the request within ten business days will result in the request being deemed withdrawn. If charges are estimated to be in excess of fifty dollars (\$50.00), the requestor will be required to pay the charges before the District begins gathering the requested information. In such event, the District will provide the requestor an itemized invoice of charges. The requestor will be reimbursed for any overpayment.
- g) **Notifying Requestor of Revised Estimate of Charges.** A written, updated estimate of charges must be sent to the requestor if, before copies have been made or paper records made available, the District determines that it underestimated the charges itemized in the original notice. The revised estimate must inform the requestor that the request will be deemed withdrawn if he or she does not respond to the new estimate within ten days from the date it is sent.
- h) **Requirement To Provide Invoice.** The requestor shall be sent a completed invoice showing the total amount of charges to be paid to the District and informing him or her that payment should be made within ten days each time a fee is charged for providing public information.
- i) **Requirement to Delete/Redact Confidential Information.** If requested public information is mingled with confidential information, all confidential information must be deleted/redacted before the public information is made available to the requestor. The requestor may be charged for deleting/redacting confidential information only in accordance with this Policy.

- j) **Allowing Viewing of Information at District Office.** If the Requestor wishes to review public information rather than receive copies, he or she should be allowed to inspect and duplicate the information in a comfortable environment within the time frame set out in this Policy. The requestor must complete his or her examination within ten days after the requested information has been made available. This time period will be extended for an additional ten days upon written request. Access may be interrupted if the District needs the information for official business. The period of interruption shall not be considered a part of the time period for examination. The requestor may not at any time remove original copies of a public record from the District office.
- k) **Information in Electronic or Magnetic Medium.** If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or magnetic tape. The District shall provide a copy in the requested medium if:
- (1) The District has the technological ability to produce a copy of the requested information in the requested medium;
 - (2) The District does not have to purchase any software or hardware to accommodate the request; and
 - (3) Providing a copy of the information in the requested medium will not violate the terms of any copyright agreement between the District and a third party.
- l) **Inability To Provide Information In Requested Format.** If the District is unable to produce a copy of the information in the type of medium requested, it shall provide a paper copy of the requested information in another medium that is acceptable to the requestor. The District is not required to copy information onto a diskette or other material provided by the requestor and may use and charge the requestor for its own supplies.
- m) **Responses Requiring Programming or Information Manipulation.** The District must inform a requestor in writing if providing requested information requires programming or manipulation of data and if the District has the ability to do so. The written notice must state that the information is not available in the requested form; describe the form in which it is available; describe the services that would be necessary to provide it in the requested form; an estimate of the cost in accordance with the charges set forth in this Policy; and the time it will take to respond to the request. This written statement shall be provided to the requestor no later than twenty days after the date the request was received. The District may have an additional ten days to provide the statement if, within twenty days of receipt of the request, written notice is given to the requestor that additional time is needed.
- n) **Maintaining Records of Requests for Information.** It is important that the District maintain complete records of requests for information made under the Act. The General Manager is responsible for maintaining accurate records of requests and responses.

- o) **No Obligation After Release of Information.** After information has been released under the Act, the District is not required to provide the Requestor with subsequent updates, corrections, or notice of a change in status of the person to whom the information pertains.

- p) **Obligation for Requestor to Respond to Notice.** After providing any written notices or statements to the requestor required under this policy, the District is not obligated to provide the information in the requested form or in the form in which it is available until the requestor states in writing that:
 - (1) He or she wants the information provided in the requested form according to the cost and time parameters set out in the statement or according to other terms agreed upon by requestor and the District; or

 - (2) He or she wants the information provided in the form in which it is available.

CHARGES FOR INFORMATION PROVIDED: Charges for providing public information should be assessed as established Appendix A of this policy and using the following guidance:

a) Charges When Requestor Views Information:

- (1) Access to information in standard paper form. Generally, the District shall not charge for making available for inspection information maintained in standard paper form. Charges will be assessed for making public information available for inspection when:
 - (i) The requested public information is mingled with confidential information. In such case, the District may charge for the photocopying costs of creating an edited version of the documentation. The District may not charge for personnel time spent deleting/redacting confidential information.

 - (ii) The anticipated personnel costs for making the information available for inspection is (1) older than three years; or (2) completely fills or when assembled will completely fill three or more archival boxes and the District estimates more than two hours will be required to make the information available.

- (2) Access to information in other than standard form. The District shall not charge the requestor for the cost of preparing and making available such information, unless complying with the request will require programming, manipulation of data, or redaction of information. If programming or manipulation of data is required to make the information available, the requestor shall be notified as set out in section “m” above.

(3) Access to information in an electronic form on District computer. If public information exists in an electronic form on a computer owned or leased by the District and if the public has direct access to that computer through a computer network or other means, the electronic form of the information may be electronically copied from that computer without charge if accessing the information does not require processing, programming, or manipulation on the government-owned or government-leased computer before the information is copied

b) **Definition of Charges.** The following definitions apply to charges that may be assessed for providing public information. All charges that may be assessed are reflected in Appendix A of this policy.

(1) Overhead charges. Direct and indirect costs that may be assessed whenever any personnel charge is applicable to a request, in addition to the specific personnel charge. This charge, assessed at a rate of twenty percent (20%) of the personnel cost associated with a particular request, covers such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead.

(2) Miscellaneous supplies. The actual cost of supply items, included but not limited to, labels, boxes, and other supplies used to produce the requested information, may be added to the total charges for public information.

c) **Charges for Personnel Time Spent Deleting/Redacting Information.** The District may charge for personnel time spent deleting/redacting confidential information from public information when the requestor specifically requests copies of information and the District is required by law to withhold the confidential information. No charges may be assessed for personnel time spent redacting information the attorney general has determined may be withheld pursuant to the Act's permissive exceptions. Additionally, the District may charge for the photocopying costs of creating an edited version of the documents from which confidential information was redacted.

d) **Charges Exceeding Estimate.** Actual cost charged to the requestor may not exceed twenty percent of the original estimated charges if the District did not send a revised estimate. Actual charges may not exceed those detailed in the updated estimate if a revised estimate was sent.

e) **Waiver and Reduction of Charges.** The District may waive or reduce charges when it determines that furnishing the information primarily benefits the general public.

f) **Requirement to Record Time and Notify Requestor.** District employees involved in providing information pursuant to a request under the Act should maintain a detailed

record of the time and resources spent responding to the request. If the charge for providing a copy of public information includes costs of labor, the requestor may require the District to provide him or her with a written statement as to the amount of time that was required to produce and provide the information. A charge may not be imposed for providing the written statement to the requestor.

g) **Charges For Publications Printed For Public Dissemination.** The charges outlined herein do not apply to any publication that is compiled and printed by or for the District for the purpose of public dissemination. In such case, the District may determine the appropriate charge, if any, for providing the publication.

POTENTIAL LIABILITY FOR FAILURE TO COMPLY WITH THE ACT AND

THIS POLICY: Failure to comply with the Act and with this Policy could expose the District and individual employees to sanctions, including civil and criminal liability.

Employees also face disciplinary action by the District. Actions that may be considered a violation of the Act or this policy include, but are not limited too, the destruction, removal, or alteration of public information; the failure or refusal to provide access to or copies of public information; and the intentional disclosure of information considered confidential under the Act.

Approved and adopted this ____ day of _____, 2003.

Sandra Simmons
President
Board of Directors

Attest:

Daniel Kohlhofer
Secretary
Board of Directors

APPENDIX A
GUIDELINES FOR COPY CHARGES

Copy charges are as follows:

1. Standard-paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has a printed image is considered a page.
2. Nonstandard-size copy. The charges for nonstandard size copies are:
 - a. Diskette - \$1 CD - \$2
 - b. Magnetic tape - \$11 for 9 track tape; \$12 for 8mm tape; \$13.50 for 4 mm tape
 - c. Data cartridge - \$17.50 for 2000 series; \$20 for 3000 series or 600A; \$25 for 6000 series; \$35 for 9000 series
 - d. Tape cartridge - \$38 for 250 MB; \$45 for 525 MB
 - e. VHS video cassette - \$2.50
 - f. Audio cassette - \$1
 - g. Oversize paper copy (i.e., 11" x 17", greenbar, bluebar) - \$.50
 - h. Mylar - \$.85/linear foot for 3mil.; \$1.10/linear foot for 4 mil. \$1.35/linear ft for 5 mil.
 - i. Blueprint/Blue line paper - \$.20/linear ft (all widths)
 - j. Other - actual cost

The charges are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

Personnel charges are as follows:

1. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the District will charge the actual cost for contracted programming services plus 10% administrative fee. All fees must be paid by the requestor prior to the District contracting for programming services.
2. The charge for other personnel costs incurred in processing a request for public information is \$15 an hour. Where applicable, the other personnel charge may include the actual time to locate, compile, and reproduce the requested information.
3. Personnel charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in more than one building or a remote storage facility.
4. Other personnel time should not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information to determine whether the District will raise any exceptions to disclosure of the requested information under subchapter C of the Public Information Act.
5. When confidential information is mixed with public information in the same page, personnel time may be recovered for time spent to obliterate, blackout, or otherwise obscure confidential information in order to release the public information.

Microfiche and microfilm charges are as follows:

1. If the District already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the fiche or film can be released in its entirety, the District should make a copy of the fiche or film. The charge for a copy must not exceed the cost of reproduction. Because the District does not have in-house capability to reproduce microfiche or microfilm, the requestor will be charged the actual costs of having the reproduction made commercially.
2. If only a master copy of information in microform is maintained, the charge is \$.10 per page for standard-size copies plus any applicable personnel charge for more than 50 copies.

Remote document retrieval charges are as follows:

1. Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by the District to store current records on-site. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services.
2. If the District has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver and return to storage the needed record(s), no additional personnel charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the District, the boxes must still be searched for records that are responsive to the request, a personnel charge is allowed in accordance with #2, under personnel charges, above.

The actual cost of miscellaneous supplies, such as labels, boxes and other supplies used to produce the requested information may be added to the total charge for public information.

The District will add any related postal or shipping expenses that are necessary to transmit the reproduced information to the requesting party.

Sales tax shall not be added on charges for public information.