

DEPARTMENT OF
PUBLIC WORKS

OFFICE OF THE DIRECTOR

CITY OF SACRAMENTO
CALIFORNIA

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ADMINISTRATION
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May 24, 1990

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: **RESOLUTION ESTABLISHING THE POLICY AND PROCEDURE FOR DISCLOSURE OF
PUBLIC RECORDS**

SUMMARY

Staff recommends that the City's policy and procedure for disclosure of public records be modified to expressly exempt "trade secrets" from the definition of public records.

BACKGROUND

In accordance with the California Public Records Act (Government Code Section 6250, et seq), Resolution No. 75-626 was adopted on December 30, 1975. This resolution established a procedure for the disclosure of public records and provided a fee schedule for copies of those records. On November 1, 1988, Resolution No. 88-939 updated this procedure to include definitions within the policy. Staff has since discovered that unlike the State Government Code, Resolution No. 88-939 does not expressly exempt "trade secrets" from the definition of "public records." This exemption would afford protection for proprietary information submitted in confidence to the City in connection with Request-for-Proposals (RFP's), or other bidding procedures where such private financial information is required as part of the process. As written in the resolution the City Manager has discretion to allow disclosure in an appropriate situation.

FINANCIAL DATA

Not applicable.

POLICY CONSIDERATIONS

The proposed modification clarifies the City's policy and procedure for disclosure of public records, which includes exempting trade secrets from the definition of public records.

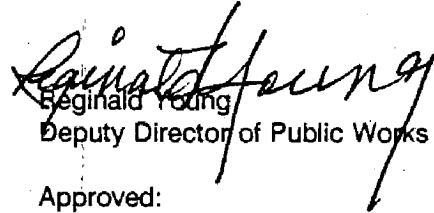
MBE/WBE EFFORTS

Not applicable.

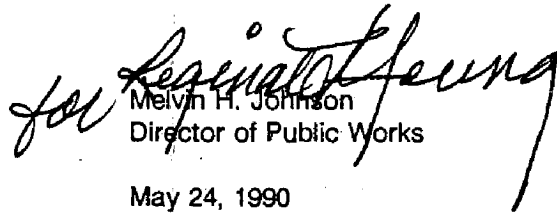
RECOMMENDATION

It is recommended that the Law and Legislative Committee forward to the City Council, with a recommendation for approval, the attached resolution modifying the City's policy and procedure for disclosure of public records to expressly exempt "trade secrets" from the definition of public records.

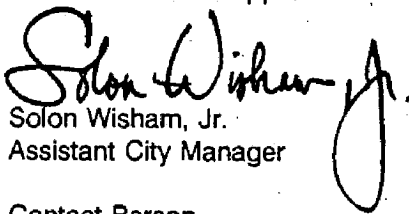
Respectfully submitted,


Reginald Young
Deputy Director of Public Works

Approved:


Melvin H. Johnson
Director of Public Works

Recommendation Approved:


Solon Wisham, Jr.
Assistant City Manager

Contact Person
Sabrina Thompson, Deputy City Attorney
449-5346

May 24, 1990
All Districts

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION SUPERSEDING RESOLUTION 88-939 ESTABLISHING THE POLICY AND PROCEDURE FOR DISCLOSURE OF PUBLIC RECORDS

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. PURPOSE

It is the intent of the City Council, in adopting this resolution, to provide procedural guidelines for disclosure of City of Sacramento public records in accordance with provisions of the California Public Records Act (Government Code Section 6250, et seq.).

SECTION 2. POLICY

It is the policy of the City of Sacramento to fully cooperate with the public and honor its obligation under law to provide public access to documents which are public records, while protecting individuals' rights to privacy.

SECTION 3. DEFINITIONS

1. **PUBLIC RECORDS:** Any document containing information relating to the conduct of the public's business, prepared, owned, used, or retained by the City, regardless of physical form or characteristics. "Public Records" does not include "trade secrets" as defined in California Government Code Section 62540.7(c). Disclosure of documents designated as "trade secrets" is subject to discretion of the City Manager.
2. **EXEMPT RECORDS:** Exempt records include, but are not limited to, the following:
 - a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the department in the ordinary course of business;
 - b) Records pertaining to pending litigation to which the City is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of the Title 1 of the Government Code;
 - c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

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- d) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;
- e) Records of complaints or investigations conducted or intelligence information or security procedures compiled for correctional, law enforcement, or licensing purposes;
- f) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;
- g) Contents of real estate appraisals, engineering, or feasibility estimates and evaluations relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreements obtained;
- h) Information required from any taxpayer in connection with the collection of local taxes, which is received in confidence, and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;
- i) Library circulation or registration records or library and museum materials made or acquired and presented solely for reference or exhibition purposes;
- j) 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;
- k) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish personal qualification for the license, certificate, or permit applied for;

IN ADDITION, any record not expressly exempted is nonetheless exempt if the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

SECTION 4. EXAMINATION OF RECORDS

All public records, not exempt from disclosure under the Public Records Act, shall be available for inspection by any person during regular City office hours.

The examination of the records of any department shall be carried out in such location and under such supervision as the head of the department may reasonably deem appropriate to safeguard the records and maintain the efficient conduct of business.

SECTION 5. PROCEDURE FOR DISCLOSURE

At any time during this process, if there are questions concerning the validity of the request or possible exemption of the record, the department head may seek the City Attorney's advice.

1. The initial request should be in writing and directed to the department responsible for the requested record to ensure prompt and efficient service.
2. Whenever possible, records will be made available at the time of the request. However, staff duties take precedence over lengthy or unusual requests for records.
3. When a person makes a request, either verbally or in writing, for access to or copies of public records, the department head (or staff designee) handling the request will decide if the record is exempt from disclosure.
4. If a verbal request is made and the record cannot be made immediately available, the request must then be made in writing and directed to the department responsible for the particular record.
5. In accordance with Government Code Section 6256, the City shall, as soon as reasonably practicable but within ten (10) days after receipt of the written request, notify the requester of the determination of the request and the reason thereof.
 - a) If the determination is that the requested record is exempt, refer to Section 7.
 - b) If the record is not exempt from disclosure, it and/or copies will be made available at the time of the request, if at all possible.
 - i. If the person making the request only wants to inspect the records, all efforts will be made by staff to have it available at the time of the request.
 - ii. If immediate copying is reasonably convenient for staff, then copies will be made while the requester waits.
 - iii. If, at the time of the request, the duties of the City employee or the amount of material to be located or copied, or other matters make immediate inspection or copying of the requested materials unreasonable, then the department head or staff designee shall so inform the requester and make arrangements to have the inspection or copying done at a later time.
6. The City may not charge a fee for the "inspection" of a record. However, the public has a right to obtain copies of public records and the City may charge a fee to cover the cost of reproduction.
7. Any money collected for the costs of reproduction shall be recorded as a cash transaction and deposited as revenue.

SECTION 6. COST FOR COPIES OF RECORDS

A fee shall be charged for a copy of any public record made upon request, at the rates set forth in the City's Fee and Charge Report, unless mandated by Federal or State law to be free to charge.

The person requesting such copy shall make payment of such cost to the department head (or staff designee), who shall certify the amount paid on such form approved by the Revenue Manager and return a duplicate thereof to such person. The department head (or staff designee) shall then provide to the person the copy requested.

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SECTION 7. REFUSAL TO DISCLOSURE/REVIEW

When, in the opinion of a department head, a document should not be disclosed to a person requesting such disclosure, the department head shall state the reason for refusing disclosure to such person.

Any person dissatisfied with the determination of a department head regarding the disclosure of a document may appeal such decision to the City Manager, in writing, within ten (10) days of the decision.

Within ten (10) days after receipt of an appeal, the City Manager shall review the decision of the department head, consult the City Attorney as appropriate, confirm or reverse the decision, and notify the department head, and thereafter the requester, in writing, of the determination made.

SECTION 8. POSTING OF THIS RESOLUTION

A copy of this resolution shall be posted in a conspicuous public place and made available upon request, free of charge.

SECTION 9.

Resolution No. 88-939, adopted November 1, 1988, is hereby repealed.

MAYOR

ATTEST:

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