

COCONINO COUNTY
POLICY ON PUBLIC RECORDS REQUEST

A. PURPOSE:

The purpose of this policy is to assist Coconino County departments with processing public information requests by defining guidelines for non-commercial and commercial use requests so as to respect the public's right to information as well as to maximize cost recovery from the sale of public data.

B. NATURE OF PUBLIC RECORDS:

Public records are those which are required by law to be kept, or which are necessarily kept in order to discharge public duties, or which are kept at the convenience of a public employee as evidence of the activities or transactions of his or her office. Public records in the office of any officer or employee are open to inspection by any person. However, not all information in a public record is available for inspection or reproduction. There are three broad exceptions: (1) those matters declared confidential by law, (2) those matters which involve personal privacy and (3) those matters which may not be disclosed in the "best interest" of the county. While Arizona law is liberal in terms of favoring disclosure, it is important to note that many state and federal laws as well as case law sanction the county employee with criminal and/or civil penalties for wrongful disclosure of confidential information. On the other hand, if the public entity wrongfully denies access to a public record and if the court determines that the custodian of the public record acted in bad faith, or in an arbitrary or capricious manner, the court may award legal costs, including reasonable attorney's fees against the county. A.R.S. § 39-121.02(B). Additionally, if a person is wrongfully denied access to a public record, the court may award damages against the public officer or public body. A.R.S. § 39-121.02(C).

C. DEFINITION OF A LEGAL RESPONSIBILITY

A number of legal provisions govern Coconino County's response to any request for public information, including:

1. The Public Records Act, A.R.S. §§ 39-121-121.03, et seq.
2. The Open Meetings Act, A.R.S. § 38-431.
3. Various information-specific statutes and administrative regulations designating particular information as either subject to public access or as confidential.
4. The body of law interpreting these provisions as reported in court decisions and opinions of the Arizona Attorney General.

Coconino County as a public body, and its officers are responsible for maintaining all records reasonably necessary or appropriate to maintain an accurate knowledge of their activities. Permanent public records must be maintained in accordance with the requirements of A.R.S. § 39-101 and other state and federal laws. Other public records must be maintained in accordance with A.R.S. § 39-121.01 (B) and (C) unless properly disposed of pursuant to A.R.S. §§ 41-1344, 41-1347 and 41-1351.

D. DEFINITIONS:

1. A “Public record” and “other matters” include:

- a. A record that is made by a public official pursuant to a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference,
- b. A record that is required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law to serve as a memorial and evidence of something written, said, or done, or
- c. A written record or transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by express provisions of law or not.

Most records in the possession or control of a public officer or body will be “public records”. Exceptions are “work-in-progress,” e.g., a work that is not yet finished, or information that is used solely as a memory aide, e.g.. “post-it” notes.

2. Commercial Purpose is the use of a public record for the purpose of:

- a. Sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale,
- b. Obtaining the names and addresses from such public records for the purpose of solicitation, or
- c. For any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record.

Note: Requests from the news media are not “commercial purpose” requests. Star Publishing Co. v. Parks, 152 Ariz. Adv. Rep. 69 (App. 1993).

3. Public Body includes the state, any county, city, town, school district, political subdivision or tax-supported district in the state; any branch, department, board, bureau, commission, or council or committee of the foregoing; and any public organization or agency that is supported in whole or in part by funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof.

4. Officer is any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, or superintendent, or chairman of any public body. Where an official is under a legal duty to oversee a public body’s records, the official is “a person responsible.”

5. Person Requesting Data includes corporations, associations, societies, and individuals.

6. Public Data is the data that is contained in or derived from public records.

7. Reasonable Amount of Time means that the County must permit access to data within a reasonable amount of time after the request is made, so long as the access does not disrupt public business. The amount of time depends on the factual circumstances of each case. The County may not, however, keep all records in a private classifications for an extended period of time on the basis that some reports may not be disclosed.

E. GENERAL POLICY:

The Following policy is established to manage the release of public records held by Coconino County:

1. The Public Records Act is to be interpreted liberally to facilitate broad access to public records.

2. Public Records and other matters in Coconino County offices are presumed to be open for public inspection and shall be open to inspection at all times during office hours, with three broad exceptions:

- a. Confidentiality-Disclosure is not required where prohibited by statute, court rule, or court order (e.g., medical records)
- b. Personal Privacy-Information containing personal information about an individual need not be disclosed due to an individual's privacy rights (e.g., home address, telephone number, racial background)
- c. Best Interests-Disclosure may not be required if release of the information is not in the best interests of the public body (e.g., release would prohibit public safety efforts or place the County at a competitive disadvantage)

3. A public record request for information which appears to fall within these exceptions should be referred to the Coconino County Attorney's Office as soon as possible.

4. Generally:

- a. Coconino County has the burden of proving that release of specific public information should not be allowed.
- b. Public data requests should be submitted to Coconino County departments in writing. (See Forms Section of this Policy)
- c. Department management has the discretion to accept verbal public data requests.
- d. The standard forms supplied with this policy should be completed by a requester before any public data is released, unless the requester has already provided all the information in writing.
- e. Any person may request to examine or be furnished copies, printouts, or photographs of any public record during regular office hours. However, if the custodian does not

- have the facilities for making copies of the public records, the copies may be made while the public records remain in the control of the custodian and subject to the custodian's supervision. The County is not required to allow the requester to make his or her own copies.
- f. The public does not have the right to demand access to records unless they have a substantial connection with the public officer or body's activities, even if the records are located within the public entity's offices.
 - g. Requesters only have a right to the data that is already maintained and in the format in which it is currently kept. The County is not required to create a new record to meet a public records request. This means that we are not obligated to obtain new data, perform research projects, create new report formats, convert data to different medium or formats, nor perform custom programming or extraction.
 - h. Categories included in the request must be sufficiently defined to the end that the parties and the court may understand with certainty the nature of the demand. A request for "all documents in possession relating to a particular matter" is not sufficiently specific. Industrial Commission v. Holohan, 97 Ariz. 122,397 P.2d 624 (1964).
 - i. The County no longer has control over the data once it has been released; therefore, collecting pertinent information from the requester is critical.
 - j. Information which falls within an exemption may be "redacted", which means obscured, and the remainder must be disclosed. Because one piece of information in a document does not have to be released does not mean that the entire document can be withheld.
 - k. The custodian responsible for the public data may not avoid the responsibility of performing redaction by refusing access to records.
 - l. Redaction must be done in good faith.
 - m. Voluntary disclosure of a record can preclude later claims that the record is exempt from release as a public record, particularly where the record is released to a person whose interests are adverse to those of the officer or public body.

F. ROLE OF THE COUNTY ATTORNEY:

The role of the County Attorney is to assist departments in determining the level of confidentiality of their data. Any questions regarding whether certain information is, or is not, a public record should be addressed to the Coconino County Attorney's Office as soon as possible. The individual departments are responsible for responding to public records requests. In addition to assistance to the departments on public records law and privacy concerns, the County Attorney can provide legal assistance on the procedural aspects of response and disposition of a

request for records. For example, requests should be in writing, addressed to the appropriate record custodian. The County Attorney should advise the custodian on the parameters of good faith response and insure a reasonable response time to the request. The County Attorney must advise on the necessity of redaction of privileged or confidential material from those documents which are subject to disclosure. When a records custodian reaches an impasse with a records requestor, the County Attorney should attempt to mediate the differing views and, failing compromise, litigate the issue from the plaintiff or defendant position as appropriate. In some cases, the County Attorney may choose to seek court review of records believed to be confidential prior to release to the public.

G. REQUESTS FOR PERSONNEL RECORDS:

There is a presumption of disclosure with respect to personnel records as with other public records in Arizona, but each request for records must nonetheless be considered on a case by case basis, weighing privacy interests against the public interest in disclosure. As a matter of course, social security numbers, home phone numbers, home addresses, tax information (i.e., number of dependents) and any medical information about an employee should be redacted by the personnel department records clerk prior to release of a document.

H. FEES CHARGED:

Different rules will apply to a non-commercial purpose request and a commercial purpose request for the recovery of costs.

1. For a non-commercial purpose request, the fee should reflect the actual costs involved in making a copy, which includes:

- a. Cost of paper or other media,
- b. Cost of the machinery to do the reproduction, and/or,
- c. Cost of employee to do the reproduction.

Note: The cost of searching for information cannot be recovered for a non-commercial use request.

2. For a commercial purpose request, cost may include all of the above plus the time expended in retrieving the records (i.e., cost of searching).

3. Any questions on whether a request is considered a non-commercial request or a commercial request should be addressed to the Coconino County Attorney's Office.

I. FORMS:

COCONINO COUNTY REQUEST FOR RECORDS

List the requested records, their date, and the purpose of your requests below. If necessary, attach a separate sheet to define your request as specifically as possible.

	<u>Records</u>	<u>Date</u>	<u>Purpose of Request</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	□□□□ _____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____

If these records are determined to be disclosable public records, they will be sent to you within__ working days. Additionally, by signing below, you agree not to hold Coconino County liable for any inaccurate or incomplete information which you may receive. (See Disclaimer)

Signature

Date

Printed Name

Address: _____

If your request is a non-commercial use request, you will be required to pay a __ charge for each page reproduced unless exempt by A.R.S. § 39-122. If your request is a commercial use request, you will be required to pay a __ charge for each page reproduced unless exempt by A.R.S. § 39-122.

No. of pages: _____
Total cost: _____
Received by: _____
Copies mailed on: _____

Department: _____
Date: _____

DISCLAIMER-INDEMNIFICATION: Requester/Purchaser understands and agrees that Coconino County does not guarantee the accuracy of the data and information requested and hereby expressly disclaims any responsibility for the truth, validity, invalidity, accuracy, inaccuracy of any said data and information. Requester/Purchaser agrees to indemnify Coconino County, their officers and employees from any liability which may arise from any such data or information in its actual or altered form.