

ACCESS TO PUBLIC RECORDS – REQUESTS AND FEES

I. PURPOSE

The purpose of this policy is to establish guidelines and procedures for Silicon Valley Clean Energy's (SVCE) handling and response to California Public Records Act (CPRA) requests. The Office of the Board Clerk has sole responsibility for handling and preparing the Agency's response to requests made by members of the public under the CPRA. The Board Clerk shall advise the Chief Executive Officer and Director of Finance and Administration of any significant CPRA requests. SVCE departments will cooperate fully with the Board Clerk in producing records in a timely manner.

II. PERSONS AFFECTED

This policy applies to all SVCE employees and members of the Board of Directors. SVCE employees and members of the Board of Directors who receive requests for public records are required to contact the Board Clerk's Office to report the request.

III. DEFINITIONS

"Exempt Record" means a record that may be withheld from disclosure under California law.

"Electronic Record" means a record, document, or writing contained, transcribed or held in electronic format, such as computer records, databases, e-mails, and texts.

"Member of the Public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his/her membership, agency, office or employment.

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“Person” means any natural person, corporation, partnership, limited liability company, firm, or association.

“Public Records” include any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by SVCE regardless of physical form or characteristics.

“Writing” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

IV. POLICY

The CPRA provides that the public has a right to inspect and obtain a copy of most of the records retained by public agencies in the course of doing business. The Legislature has declared that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state. The public’s right to access public records is also guaranteed by the California Constitution.

SVCE affirms the public’s right to access its public records, in compliance with the CPRA and the California Constitution. This policy shall be interpreted and enforced in a manner that is consistent with those laws.

Limitations

The CPRA’s right of access is not unlimited. The CPRA does not require a public agency to create records that are not in existence

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at the time the request is made (e.g., a written summary of a document or a list of expenditures or events).

In addition, certain categories of records are exempt from disclosure and need not be provided for inspection or reproduction. Common exemptions include but are not limited to:

- personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
- pending litigation records;
- closed session records;
- software or proprietary information;
- attorney-client privileged communications; and
- preliminary drafts or notes not kept in the ordinary course of business where the public's interest in non-disclosure clearly outweighs the public's interest in disclosure.

The Office of the Board Clerk shall consult with the SVCE General Counsel to determine whether records or portions of records are exempt from disclosure.

If SVCE determines that the requested records are to be withheld, in whole or in part, the Office of the Board Clerk shall so notify the requestor in the determination letter and shall cite the specific exemption(s). In those cases where portions of a record are public and other portions are exempt, the Board Clerk shall redact or remove the exempt information before disclosing the remainder of the record.

Complying with a Records Request

1. Requests for Public Records
 - a. Any member of the public may request to view or pay for a copy of a public record. SVCE may request, but shall not require that a requester give their name or other identifying information or put their request in writing. The requester does not have to explain why

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they want the record. A request may be made over the telephone, in person, in writing, by facsimile or electronic mail.

- b. A requester must identify an actual public record; requests that are too vague cannot be fulfilled. If known, the requester should identify the name or title of the desired record or provide a written description. The Office of the Board Clerk shall assist the requester in identifying the desired public records.

2. Inspection of Public Records

- a. Public records are open to inspection at SVCE's Offices Monday through Friday, except holidays, during regular business hours (8:30 a.m. to 5:00 p.m.).
- b. If portions of the requested record are exempt from disclosure, any reasonable portion of the record that is public shall be made available for inspection after the exempt portions are redacted or deleted.
- c. It is requested that any person wishing to inspect public records contact the Office of the Board Clerk to schedule an appointment to minimize delays.
- d. Inspection of original SVCE files/records by a requester may be supervised by a SVCE employee. Under no circumstances shall any record be altered, destroyed, or removed from the premises.

3. SVCE Response Time

- a. Within ten (10) calendar days of receipt of a request for public records, the Office of the Board Clerk shall determine whether to grant or deny a request for public records and respond to the requestor in writing with the determination. The 10-day response period starts with the first calendar day after the date of receipt.
- b. When unusual circumstances exist, the Office of the Board Clerk may extend the 10-day response time by

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an additional fourteen (14) days. Written notice to the requestor shall set forth reasons for the extension and the date for determination. Unusual circumstances include the following: the need to search for, collect and examine a voluminous amount of records; the need to consult another agency that has an interest in the determination; the need to compile data or write programming language, a computer program or construct a computer report to extract data.

- c. The 10-day response period is not the time period for complying with the request. Rather, it is the time period for responding to the requestor with a written determination as to whether records responsive have been located and what, if any, information in those records is exempt from disclosure.

4. Fees for Copies of Records

- a. The cost for copying the requested records is the direct cost of duplication or, where applicable, a statutory fee.
 - i. Direct costs do not include the staff time for tasks associated with retrieval, inspection and handling of the file from which the copy is extracted, or the time to review and compile the records.
 - ii. The Office of the Board Clerk may elect to waive the fees in certain cases in his/her sole discretion.
- b. In all cases, a requester must pay the applicable costs or fees before copies of disclosable records will be released.
- c. Photocopies:
 - i. SVCE has determined that the direct cost of duplication for normal sized photocopies is ten cents (\$0.10) per page.
 - ii. If an outside duplication firm is employed to make the requested copies, the cost charged to SVCE will be passed on to the requester.

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- d. Electronic Records:
- i. If SVCE maintains a disclosable public record in an electronic format, it shall make the record available in the electronic format when requested. If an electronic copy is requested but no format is specified, it shall be assumed that the requester is seeking a portable document format (PDF).
 - ii. The requestor is responsible for the direct cost of producing the electronic record, if any. The direct cost includes the cost of the data storage device, such as a compact disk or flash drive, unless provided in advance in new and unopened original packaging.
 - iii. If a request requires compilation, extraction, or computer programming to produce the record, or requires the production of an electronic record that is otherwise produced only at regularly scheduled intervals, the requester shall bear the cost of producing the electronic copy, including the fully burdened hourly rate of staff members required to construct the record or the cost charged by an outside programmer or consultant.
 - iv. SVCE is not required to reconstruct electronic copies of records that are no longer maintained or available in an electronic format, or to release a record in electronic form if the release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

5. Special Rules for FPPC Filings

- a. No later than the second business day following the day on which a request is received, reports and statements filed pursuant to the Political Reform Act (Gov't Code §

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81000 et seq.) must be made available for public inspection.

- b. Pursuant to Government Code Section 81008, the fee for copies of reports and statements shall be ten cents (\$0.10) per page.