

RESOLUTION NO. 2021-3

A Resolution of the Pierce County Flood Control Zone District Board of Supervisors Adopting an Amended Public Records Act Policy.

Whereas, Revised Code of Washington (RCW) 42.56.070 requires every agency to make public records available for public inspection and copying in accordance with published rules; and

Whereas, the Board of Supervisors of the Pierce County Flood Control District ("District") adopted Resolution No. 2012-7 establishing the District's rules and regulations for the inspection and copying of District public records; and

Whereas, the District adopted Resolution No. 2018-4, which authorized an interlocal agreement with Pierce County regarding support services, including support for public records requests; and

Whereas, the District has undertaken a review of its rules and regulations related to the inspection and copying of District public records and desires to amend said rules to account for recent statutory updates; **Now Therefore**,

BE IT RESOLVED by the Board of Supervisors of the Pierce County Flood Control Zone District:

Section 1. Amended Pierce County Flood Control Zone District Public Records Policy Adopted. The Board of Supervisors of the Pierce County Flood Control Zone District hereby adopts the amended Public Records Policy attached as Exhibit A to this Resolution.

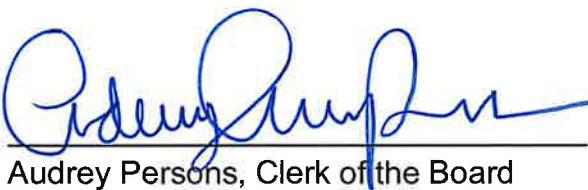
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2 Pierce County Flood Control Zone District
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7 Section 2. Previous Versions Superseded. Any previous versions of the policies
8 adopted by this Resolution, whether or not adopted by the Board of Supervisors, are
9 hereby superseded.
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12 ADOPTED this 14th day of July, 2021.
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15 ATTEST:
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17 **PIERCE COUNTY FLOOD CONTROL**
18 **ZONE DISTRICT**
19 Pierce County, Washington
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23 Audrey Persons, Clerk of the Board
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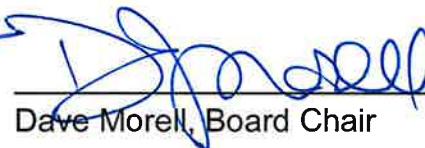
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26 Dave Morell, Board Chair
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Exhibit A

Pierce County Flood Control District Public Records Act Policy

Section 1. Authority and Purpose

A. Chapter 42.56 RCW, the Public Records Act ("act"), requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published policies.

B. The purpose of these rules is to establish the procedures the District will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the District and establish processes for both requesters and the District staff that are designed to best assist members of the public in obtaining such access. These rules have been written to incorporate best practices for compliance with the act and are based upon and organized according to Model Rules promulgated by the Attorney General of the State of Washington (WAC 44-14).

C. The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights, to protect public records from damage or disorganization and to prevent excessive interference with other essential functions of the agency. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the District will be guided by the provisions of the act describing its purposes and interpretation.

D. These policies include statutory requirements and best practices. Nothing in this policy is intended to impose legal obligations on or create rights in the District beyond those obligations and rights created by statute or other binding laws.

Section 2. Definitions

For this policy, the following definitions apply:

A. "All records relating to," "all records regarding," or "all records pertaining to" means those records that directly and fairly address the topics that are reasonably identifiable by the Public Records Officer fulfilling the request. These phrases are inherently ambiguous, and requestors are encouraged to avoid using such terms when possible to avoid unnecessary delays.

B. "District" means the Pierce County Flood Control District.

C. "Counter document" means a frequently requested document retained by the District that is easily accessible, requires no coordination among district staff, and are

known to be public information, e.g., copies of current department brochures, zoning maps, etc.

D. "Electronic record" includes those public records which are stored on machine-readable file format. If a record is created in an electronic format, the electronic record is the primary record and is subject to provisions of the PRA. Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention period. Printing and retaining a hard copy is not a substitute for the electronic version. Responses to public record requests for electronic records other than those in common file formats such as .pdf or similar formats will be coordinated through the Public Records Officer.

E. "Exempt record" means records or portions of records that are exempt from public disclosure. Exemptions include those identified in the PRA or in other statutes incorporated by RCW 42.56.070. Exemption from disclosure of a portion of a record does not automatically exempt the remainder of the record from disclosure. Exempt portions of records may be subject to redaction.

F. "Identifiable record" means a record that is in existence at the time the records request is made, and that District staff can locate after an objectively reasonable search. An "identifiable record" is not a request for "information" in general. For example, asking "what policies" the District has for handling discrimination complaints is merely a request for "information." On the other hand, a request to inspect or copy the District's policies and procedures for handling discrimination complaints would be a request for an "identifiable record."

G. "Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. Electronic data, including email, that meet this definition shall be considered a public record. Records created or received by employees using non-district devices meet the definition of public record if the employee was acting within the scope of employment when the record was created or received. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

1. Do not serve in an administrative capacity;
2. Have not been appointed by the agency to an agency board, commission, or internship; and
3. Do not have a supervisory role or delegated agency authority.

H. "Public records request" means a request made to the District pursuant to the Public Records Act for disclosure of public records. Requests for public records made

pursuant to other statutory rights of access to public records shall not be considered "public records requests," but may be otherwise handled under this policy.

I. "Public Records Officer" is the central point of contact for public records request for the District, as required under RCW 42.56.580. For all records requests, Public Records Officer is the Clerk of the Board of Supervisors or designee and is further described in Section 3(C) and Section 3(D) below.

J. "Requestor" means the individual making the request for public records by submitting an official public records request.

Section 3. Agency Description - Contact Information - Public Records Officer

A. The District is a quasi-municipal corporation of the State of Washington and an agency subject to the act.

B. All Pierce County departments, divisions and bureaus providing services for and acting on behalf of the District are required to follow these procedures for public records of the District.

C. The Public Records Officer for the District shall be the Clerk of the Board of Supervisors, whose address is 930 Tacoma Avenue S Tacoma, WA 98402, phone number 253-798-7778, and fax number 253-798-7509.

D. The Public Records Officer will oversee compliance with the Act but the officer's designee may process the request. The Public Records Officer will provide the "fullest assistance" to requesters; ensure that public records are protected from damage or disorganization; and prevent fulfillment of public records requests from causing excessive interference with essential functions of the District or its contracting agencies, including but not limited to Pierce County.

Section 4. Availability of Public Records

A. Hours for Inspection of Records. Public records are available for inspection and copying during normal business hours of the District. Records must be inspected at the offices of the Public Records Officer or such other location designated by the Public Records Officer.

B. Records Index. The District Board of Supervisors finds that maintaining an index is unduly burdensome and would interfere with operations for the District for the reason that the District has no employees, relying on services from Pierce County and contractors. Furthermore, Pierce County does not maintain an index, having found that maintaining an index is unduly burdensome or would interfere with Pierce County operations.

C. Organization of Records. The District maintains its records in a reasonably organized manner. The District will take reasonable actions to protect records from damage and disorganization. A requester shall not take original records from District offices. A variety of records are available on the District's website at: <https://www.piercefloodcontrol.org/>. To the extent practical, the District will store, maintain, and make its records available electronically. Requesters are encouraged to view the documents available on the website prior to submitting a records request (RCW 42.56.520).

D. Retention of records. The District will retain its records in accordance with retention schedules available at www.sos.wa.gov. (Retention schedules vary based on the content of the record). Public records may not be destroyed according to the retention schedule if a public records request or actual or anticipated litigation is pending.

Section 5. Making a Request for Public Records

A. Where to make a request. Requests to inspect or copy District records should be made to the Public Records Officer.

B. Form of request. It is the requestor's obligation to provide the District with fair notice that a Public Records Act request has been made. When a requestor does not use the standard request form or makes a request to an employee who is not the Public Records Officer, or includes a request as part of other documents provided to the District for reasons other than making a Public Records Act request, the requestor may not be providing fair notice to the District. To ensure fair notice is provided, requestors are encouraged to use the standard request form, make contact with the Public Record Officers, and/or take other steps to clearly identify their request. For example, when a request is submitted with other documents not related to disclosure of public records, it shall be the responsibility of the requestor to provide reasonable notice that a public records request is included. This notice may be in the form of an entry on a cover or transmittal sheet.

C. Request and submittal information.

1. The following information should be included in the request:
 - a. Name of requester;
 - b. Mailing address of requester;
 - c. Other contact information, including telephone number, fax number, and any e-mail address;
 - d. Reasonable identification of the public records requested adequate for the Public Records Officer to identify and locate the records;

- e. The date and time of day of the request; and
- f. The signature of the requester.

2. The request should be submitted in one of the following ways:
 - a. By letter, fax, or email addressed to the Public Records Officer; or
 - b. On the provided request form, in person, at the District Headquarters.

D. Copies: If the requester wishes to have copies of the records made, instead of simply inspecting them, he or she shall so indicate and make arrangements to pay for copies of the records or at least make a deposit of 10 percent of the cost of copying estimated by the Public Records Officer before copying will commence. Pursuant to Section 6 of this resolution, standard black and white 8 1/2" x 11" photocopies will be provided at 15 cents per page.

E. Commercial use prohibited. If the request is for a list of individuals, the Public Records Officer may ask the requestor if they intend to use the records for a commercial purpose. The District is not authorized to provide lists of individuals for commercial purposes. Further, Any person requesting public records that include a list of individuals will be required to provide a declaration under penalty of perjury, certifying sufficient facts from which the Public Records Officer can reasonably determine that the records will not be used for any commercial purpose (profit-expecting activity) prohibited by RCW 42.56.070(9) unless specifically authorized by other law.

F. Disclosure to particular classes. Any person requesting public records for which other laws limit or prohibit disclosure to a particular class of persons or for limited purposes will be required to provide a declaration under penalty of perjury, certifying sufficient facts from which the Public Records Officer can reasonably determine that the legal requirements for disclosure of such records to the requester have been met.

G. Purpose of request. A requestor need not state the purpose of the request. However, in an effort to clarify or prioritize a request and provide responsive records, the Public Records Officer may inquire about the nature or scope of the request. The Public Records Officer may also seek sufficient information to determine if another statute may prohibit disclosure.

H. Overbroad requests. Public records requests must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by the District is not a valid request for identifiable records, though a request for all records regarding a particular topic or keyword is considered a valid request for public records. The District may not deny a request for identifiable public records solely because the request is broad, but the District may seek clarification, ask the requestor to prioritize the

request so that the most important records are provided first, and/or communicate with the requestor to limit the size and complexity of the request. When a request uses an inexact phrase such as "all records relating to," the Public Records Officer may interpret the request to be for records which directly and fairly address the topic. When the requestor has found the records they are seeking, the requestor should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.

I. Existing records. Records requests may only encompass existing records. They cannot be used to obtain copies of records not yet in existence or in the possession of the District.

J. Bot requests. If the District receives multiple requests from the same requestor within a 24-hour period and reasonably believes these to be "bot" requests (i.e., automatically generated requests from a computer program or script), the District may deny all but one of the requests if the Public Records Officer reasonably believes that responding to all requests would excessively interfere with essential office functions.

Section 6. Processing of Public Records Requests - General

A. Providing "fullest assistance." The District is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requesters, and provide the "most timely possible action" on public records requests. All assistance necessary to help requestors locate responsive records shall be provided by the Public Records Officer, provided that the giving of such assistance does not unreasonably disrupt the daily operations of this person or other duties of any assisting employee(s) in District support roles. The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

B. Acknowledging receipt of request. Within five business days of receipt of the request, the Public Records Officer will do one or more of the following:

1. Make the records available for inspection or copying;
2. Provide an internet address and link on the District's website to the specific records requested, except that if the requester notifies the District that they cannot access the records through the internet, then the District must provide copies of the record or allow the requester to view copies using a District computer.
3. Provide in writing, mailed or delivered to the requester, a reasonable estimate of time when records will be available;

4. If the request is unclear or does not sufficiently identify the requested records, request clarification from the requester. Such clarification may be requested and provided by telephone, but it is desirable to confirm such clarifications in writing. The Public Records Officer may revise the estimate of when records will be available; or

5. Deny the request, in whole or in part.

C. After-hours requests. For purposes of calculating the five-day response period identified in subsection (e) above, requests submitted after the close of the District's usual business hours, will be treated as having been received by the District on the following business day.

D. Providing records. The District is only required to provide records that exist at the time a request is made. The District cannot fulfill "standing" requests or requests for records that may be created at a future date.

E. Consequences of failure to respond. If the District does not respond in writing within five business days of receipt of the request for disclosure, the requester should consider contacting the Public Records Officer to determine the reason for the failure to respond.

F. Consequences of disclosing a record in error. The District and its officials or employees are not liable for loss or damage based on release of a public record if the District, official, or employee acted in good faith in attempting to comply with the Public Records Act.

G. Coordination with Pierce County. Upon written request by Pierce County, the Public Records Officer shall provide reasonable assistance in responding to public records requests for County public records that relate to the District.

H. Protecting rights of others/third party notification. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the Public Records Officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requester and ask him or her to revise the request or, if necessary, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request. The notice should also either include a copy of the records the District intends to produce (including any redactions), or should provide the third party the opportunity to inspect the records that the District intends to produce (including any redactions).

I. Records Exempt or Prohibited from Disclosure. Some records are exempt from or are prohibited from disclosure by law, in whole or in part (see Section 5 below). If the District believes that a record is exempt from or prohibited from disclosure and should be withheld, the Public Records Officer will state the specific exemption or

prohibition under which the record or a portion of the record is being withheld. If only a portion of a record is exempt or prohibited from disclosure but the remainder is not exempt or prohibited, the Public Records Officer will redact the exempt or prohibited portions, provide the nonexempt portions, and indicate to the requester why portions of the record are being redacted.

J. Inspection of Records.

1. Consistent with other demands, the District shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requester shall indicate which documents he or she wishes the District to copy.

2. The requester must claim or review the assembled records within 30 days of the District's notification to him or her that the records are available for inspection or copying. The District will notify the requester in writing of this requirement and inform the requester that he or she should contact the District to make arrangements to claim or review the records. If the requester or a representative of the requester fails to claim or review the records within the 30-day period or make other arrangements satisfactory to the District, the District may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or similar records, which can be processed as a new request.

K. Failure to clarify a request. If an entire request is unclear, and if the requestor does not respond to the District's request for clarification within 30 days of the District's request, the Public Records Officer may consider the request abandoned, send a letter closing the response to the requestor, and re-file the records. If only portions of a request are unclear and a requestor fails to respond to a request for clarification, the District must respond to the parts of the request that are clear.

L. Providing Copies of Records. After inspection is complete, the Public Records Officer shall make the requested copies or arrange for copying upon a deposit of at least 10 percent of the estimated cost of copying.

M. Providing Records in Installments. When the request is for a large number of records, the Public Records Officer will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requester fails to inspect the entire set of records or one or more of the installments after being made available, or to pay the balance of the cost of copying of records copied or those copied in an installment, the Public Records Officer may stop searching for the remaining records and close the request.

N. Completion of Inspection. When the inspection of the requested records is complete and all requested copies are provided, the Public Records Officer will indicate that the District has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

O. Closing Withdrawn or Abandoned Request. When the requester either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the Public Records Officer will close the request and indicate to the requester that the District has closed the request. Subsequent copies requested may not be made until the requester has paid any unpaid bill for copying services requested by the requester, whether or not the copies previously made have been retained for the requester or destroyed when the previous bill remained unpaid for more than 30 days after notice mailed to the requester.

P. Later Discovered Documents. If, after the District has informed the requester that it has provided all available records, the District becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requester of the additional documents and provide them on an expedited basis.

Q. Preserving requested records. If a requested record is responsive to an active request, or active lawsuit, and is scheduled shortly for destruction under the District's records retention schedule, the record cannot be destroyed until the public disclosure request, and/or lawsuit, has been resolved. Once a request has been closed, the Public Records Officer, or designee, can destroy the record in accordance with the retention schedule.

R. Requests for information. Requests for information are not public records requests. An agency is not required to conduct research for a requestor.

S. General Provisions.

1. The District may follow a reasonable schedule regarding retrieval of a record from an off-premises storage site so that no more than one trip per week to the remote site is required.

2. With regard to copying, prearrangement is recommended so that it can be accommodated within the work schedule. Copies shall be made only by the Public Records Officer. The precise time must remain flexible and will depend upon the work schedule for that day.

3. With regard to video or audio recordings, prior arrangements must be made for review. The Public Records Officer will operate the District recording equipment necessary to either listen to or re-record the original recording tape to protect originals. The Public Records Officer may limit the maximum time allowed during any working day for supervised review to avoid excessive interference with the District's other essential functions. If

the District is able to provide access which excludes the requester from access to original records which might be damaged or disorganized and from access to originals or copies prohibited or exempt from disclosure, additional time may be made available.

4. Review of other original records shall be done only in the immediate presence of and under the supervision of the Public Records Officer to protect the originals against damage, alteration, or disorganization by the requester. The Public Records Officer may limit the maximum time allowed during any working day for supervised review to avoid excessive interference with the District's other essential functions. When the time needed for this purpose exceeds two hours, time periods on a future day or days may be assigned. If the District is able to provide access which excludes the requester from access to original records which might be damaged or disorganized and from access to originals or copies or exempt from disclosure, additional time may be made available.

Section 7. Exemptions

A. The act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Exemptions outside the act that restrict the availability of some documents held by the District for inspection and copying include, but are not limited to, those set forth for municipalities in the most recent list of other such statutes posted on the web site of the Municipal Research Service Center, which is presently www.mrsc.org/Publications/pr12.pdf, Appendix C, and which is incorporated herein by reference. The list is available for inspection and copying from the Public Records Officer.

B. The District is prohibited by statute from disclosing lists of individuals for commercial purposes.

Section 8. Costs of Providing Copies of Public Records

A. Costs Required for Inspection. There is no fee for inspecting public records. There is no fee for the staff time necessary to prepare the records for inspection, for the copying required to redact records before they are inspected, or an archive fee for getting the records from off-site. The costs of making the records available for inspection or copying are not charged to the requester.

B. Costs for Copies. A requester may obtain standard 8 1/2" x 11" black and white photocopies for 15 cents per page. If the District determines that the actual cost of copying is other than 15 cents per page, that charge may be collected if a statement of the factors and the manner used to determine this charge is available from the Public Records Officer. Before beginning to make these copies, the Public Records Officer may require a deposit of 10 percent of the estimated costs of copying all the records selected

by the requester. The Public Records Officer shall require the payment of the remainder of the copying costs for those copies before providing them to the requester, whether they include all of the records or an installment. The District does not charge sales tax when making copies of public records.

C. Costs for Electronic Records. The cost of electronic copies of records shall be the amount per hour for copying information on a CD-ROM or other media, plus the listed cost for each CD-ROM or other media as set forth in the statement of the factors and manner used to determine this charge available from the Public Records Officer.

D. Costs of Mailing. The District may also charge actual costs of mailing, including the cost of the shipping container or envelope if the requester requests mailing or shipping.

E. Payment. Payment may be made by cash, check or money order to the Pierce County Flood Control Zone District.

F. Waiver of Payment. The District may waive the cost of copying if the cost is less than the cost of processing payment as determined by the Public Records Officer.

G. Charges Required by Other Statutes. If a different charge for copies or certification is required to be collected by a statute other than the act, such as RCW 36.18, RCW 46.52.085 or RCW 10.97.100, the provisions of that statute shall govern.

H. Outside Contracts for Copying. The District may arrange for copying by contractors charged with preserving and protecting public records, instead of copying requested records using District services. In such event, the cost of copying charged shall be the contract charges, and such charges shall be paid by the requester directly to the contractor who performed the copying. If the requester made a deposit in advance of copying, any unapplied portion of the deposit will be refunded to the requester, provided that the contract charges are paid and the copies are picked up by the requester within 30 days after written notice of the unpaid contract charges is mailed to the requester's address.

Section 9. Review of Denials of Public Records

A. Petition for Internal Administrative Review of Denial of Access. Any person who objects to the initial denial or partial denial of a records request may petition in writing to the Public Records Officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer denying the request.

B. Consideration of Petition for Review. The Public Records Officer shall promptly provide the petition and any other relevant information to the Chair of the Board of Supervisors to conduct the review, who shall immediately consult with the District legal counsel before action on the petition. That person will immediately consider the petition

and either affirm or reverse the denial within two business days following the District's receipt of the petition, or within such other time as is mutually agreeable to the District and the requester.

C. Judicial Review. Any person may obtain judicial review of a public records request denial pursuant to RCW 42.56.550 at the conclusion of two business days following the initial denial regardless of any internal administrative appeal.

Section 10. Access to Public Records.

The providing of public records shall be governed by the following procedures:

A. Public records shall be made available without disrupting essential functions of the District office which for purposes of this resolution shall include any office where District records are stored, assembled or offered for review.

B. Duplicate, carbon copy or other secondary records are to be dealt with in the same manner as the original or primary copy.

C. With regard to photocopying, prearrangement for copies of records is recommended so that they can be accommodated within the work schedule. Copies shall be made only by the Public Records Officer once each day. The precise time must remain flexible and will depend upon the work schedule for that day. Copies may be picked up later in the afternoon or the next day.

D. With regard to other printing, Ozalid, Sepia, blueprints, or photostatic copies of maps, graphs, charts, etc., which cannot be produced within the District office will be forwarded to the appropriate outside business. The requester will be billed directly by the printer. This will be performed once each day in a manner similar to photocopying.

E. With regard to tape recordings, prior arrangements must be made to listen to or copy a tape recording. The Public Records Officer will be assigned to operate the District recording equipment necessary to either listen to or re-record the original tape. To maintain the District's and individual's work schedule, two hours shall be the maximum time allowed during any working day for this purpose. When the time needed for this purpose exceeds two hours, time periods on future day or days will be assigned.

F. With regard to the production of transcripts, not more than two hours each working day shall be expended by the transcriber. Time periods shall be adjusted daily to fit the normal work schedule.