

## **BRAZOS MUTUAL DOMESTIC WATER USERS ASSOCIATION**

### **POLICY AND PROCEDURES FOR INSPECTION OF PUBLIC RECORDS AND RECORDS MANAGEMENT REQUIREMENTS CALENDAR YEAR 2019**

**SUBJECT:** Inspection of Public Records Policy and Records Management Requirements

**PURPOSE:** To establish a uniform procedure for responding to requests to inspect public records kept by the Brazos Mutual Domestic Water Consumer Association ("BMDWCA") and set procedures for records management

**APPLICABILITY:** All public records of BMDWCA

**POLICY:** BMDWCA shall implement the provisions of the Inspection of Public Records Act to provide access by the public to BMDWCA public records in accordance with the Inspection of Public Records Act.

**REFERENCES:** Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12; Public Records Act, NMSA 1978, §§ 14-3-1 to -25. In addition, the State BMDWCA of Public Records and State Records Administrator's Rules 1.13.2 NMAC, entitled Fees; are incorporated herein by reference and made a part hereof in their entirety.

#### **PROCEDURES:**

- I. Scope
- II. Definitions
- III. Public Records Custodians
- IV. Public Records Requests
- V. Responding to Requests
- VI. Exempt Records or Information
- VII. Denial and Referral of Requests
- VIII. Fees

#### **I. SCOPE:**

This policy prescribes procedures for making BMDWCA public records available to the public for inspection and copying pursuant to the provisions of the Inspection of Public Records Act (NMSA 1978, Sections 14-2-1 et seq., hereinafter the "Act"). BMDWCA shall treat all "Freedom of Information" requests as requests under the Inspection of Public Records Act.

#### **II. DEFINITIONS:** As used in this policy:

A. **BMDWCA public records" or "public records"** are all documents, papers, letters, books, maps, tapes, photographs, recordings, e-mail, and documents from electronic information systems (databases) and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of BMDWCA and that relate to BMDWCA business, whether or not the records are required by law to be created or maintained. BMDWCA public records do not include records such as:

1. Records that do not relate to a public body's business and are voluntarily kept by employees for their personal use;
2. Publicly available books, periodicals or other publications that are owned, distributed or copyrighted by non-BMDWCA sources; or
3. Any records that are exempt from the Act, as provided in Section VI, below;
4. Any “non-records” as defined below, adopted definition from 1.13.4.7.F NMAC;

B. “**Electronic records**” means records whose informational content has been encoded and recorded on a digital medium such as magnetic tape, drums or discs. The encoded information is retrievable only with the help of a computer. Quote from 1.13.3.7.P NMAC;

C. “**Electronic message**” includes, but is not limited to, a text message, social media and email that is created and delivered in an electronic format. Quote from 1.13.4.7.D NMAC Electronic records include, but are not limited to, information contained within databases and e-mail systems;

D. “**Information system**” means an electronic framework by which hardware and software resources are coordinated to manipulate and convert inputs and outputs in order to achieve the objective of an enterprise. Quote from 1.13.3.7.U NMAC;

E. “**Non-record**” means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and informational files. Quote from 1.13.4.7.F NMAC;

F. “**Social media**” means forms of electronic communication through which users create online communities to share information, ideas, messages and other content (e.g., twitter, facebook, instagram, pinterest, linkedin, etc.). Quote from 1.13.4.7.G. NMAC;

G. “**Transitory**” means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government. Quote from 1.13.4.7.H NMAC;

H. “**Public Records Custodian**” also referred to as BMDWCA Public Records Custodian shall receive and respond to requests to inspect public records, provide reasonable opportunities to inspect public records, and provide reasonable facilities to make or furnish copies of the public records during usual business hours. The “Records Custodian” means the statutory head of the agency or their designee (1.13.3.7 II NMAC);

I. **"Uncommon"** requests means any request to inspect public records that differs from those requests normally received. By way of example, but not of limitation, this includes requests from the media involving sensitive issues; requests concerning ongoing litigation in which BMDWCA is involved; requests from or related to public officers; requests for non-final contracts; requests for non-confidential personnel information such as salaries when the request is made for purposes other than to verify employment or for a credit check; requests for exempt records; requests for data contained within an electronic information system; requests for information in electronic form and requests that require a significant expenditure of resources;

J. **"Unusual circumstances"** means: 1. The need to search for and collect the requested public records from field facilities or offices that are separate from the office processing the request; 2. The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; 3. Other unusual circumstances beyond the control of the Public Records Custodian that could cause delay; and 4. Any other broad and burdensome request as provided by the Act;

### **III. BMDWCA PUBLIC RECORDS CUSTODIAN:**

A. Board shall appoint the Public Records Custodian. If the Public Records Custodian receives a request for public records, he/she immediately upon receiving the request, shall: a) forward the request to the BMDWCA Board Members, or members that may possess public records that may be responsive to the request; b) determine whether the requested public records exist, and if so, whether the documents are exempt pursuant to Section VI; c) make the public records available for inspection; and d) provide reasonable facilities to make or furnish copies of the public records during usual business hours.

### **IV. PUBLIC RECORDS REQUESTS:**

A. Any person may request in writing, including e-mail, to inspect BMDWCA public records. Requests to inspect public records shall be directed to the BMDWCA Public Records Custodian;

B. The request must describe the public records sought with reasonable particularity or identify the public record in sufficient detail to enable BMDWCA to reasonably identify and locate the records. A request for a specific category of public records shall be regarded as fulfilling this requirement if it enables records to be identified:

1. All written requests must provide the name, address, telephone number and email address of the person seeking access to the public records.

2. If BMDWCA determines that a request does not describe the public records sought with reasonable particularity, BMDWCA shall advise the requestor and may request additional information. BMDWCA also may extend to the requestor an opportunity to confer with Board personnel in order to reformulate the request in a manner that will meet this requirement.

## **V. RESPONDING TO REQUESTS:**

A. All requests must be sent to the BMDWCA Public Records Custodian. The Public Records Custodian shall, as soon as practicable under the circumstances, ensure non-exempt BMDWCA public records are provided for inspection;

B. If the inspection is not able to be permitted within 3 days, BMDWCA Public Records Custodian shall prepare a letter explaining that more time is needed and the date the request will be satisfied. Unless unusual circumstances exist, or it is an uncommon request, as defined in this policy, the Public Records Custodian shall ensure the requested non-exempt public records are provided for inspection no later than fifteen (15) days after receiving the request. If the Public Records Custodian determines that a request is uncommon or unusual circumstances exist, as defined by this policy, the Board shall be informed before processing the request;

C. If a request seeks an unusually voluminous amount of documents or is excessively burdensome or broad or the request is **uncommon** or where other **unusual circumstances** exist, BMDWCA Public Records Custodian shall, as soon as the voluminous or excessively broad and burdensome nature of the request is determined, but no later than 15 days after the request is received, notify the requestor in writing that additional time beyond the 15-day period for inspection will be needed to respond. The Public Records Custodian shall briefly describe the circumstances that cause the request to be excessively burdensome or broad, and approximate an amount of time that will be needed to respond. The Public Records Custodian shall ensure that the request is responded to within a reasonable period of time under the circumstances;

D. Prior to providing a response to an uncommon or unusual circumstance or broad and burdensome request, BMDWCA Public Records Custodian shall communicate to the requester an approximate fee that the requester will be required to pay to the BMDWCA; in advance of BMDWCA making copies of responsive documents. The requester shall respond with an agreement to pay the fee in advance or with a notification that the requester will come to BMDWCA to inspect the records in person;

E. The written response provided by the Public Records Custodian, for any type of public records request, shall either offer to provide a copy of the documents once the fee is paid or set out the time, location and manner for inspection of the identified public records. A person making a written request for copies of public information, after following the fee payment procedures, may have a copy of the requested public records provided by mail or email or other reasonable delivery method, without first inspecting the records. If the records request has been submitted by an attorney or law firm, or regards pending or anticipated litigation, or regards a Board member, or regards a sensitive issue, the Board shall be informed and provided with the opportunity to review the requested documents in advance of inspection by the requestor;

F. If BMDWCA does not possess the records sought, BMDWCA Public Records Custodian shall notify the requestor.

G. The Public Records Custodian shall keep a Public Information Log to document oral requests for Public Information. Oral requests shall be followed up by a written request by the requestor.

H. The Records Custodian shall identify or designate reasonable facilities to make or furnish paper copies of the public records requested during usual business hours. This may include a

private copy company where the documents may be taken and picked-up by the private copy company or BMDWCA but copied at the requestor's expense. In addition, a requester may, if inspecting records at BMDWCA, may use their own copy machine or smart phone or camera to make a copy or photograph of the document. Original public records may not be released to the requestor for copying purposes but may only be released to a private copy facility with instructions to that facility to release the records back only to the BMDWCA. Payment for copies should be made directly from the requestor to the copy facility.

## **VI. EXEMPT RECORDS OR INFORMATION:**

A. Upon receiving a request, the Public Records Custodian shall first determine whether any public records sought are exempt from disclosure as defined in this Section. Where a request seeks records that contain exempt documents or information, the Public Records Custodian shall, prior to the release of the records, (1) separate and retain exempt documents or (2) redact or delete exempt information from documents that are otherwise nonexempt. Where a request seeks information from an electronic information system or information in electronic format, the requestor must sign the BMDWCA's Release of Public Information in Electronic Format form. The Public Records Custodian shall follow the procedure found in Section VII after it has been determined that there are or may be documents that are exempt from production;

B. The following are some of the more frequently requested records that are exempt from the Act records which shall not be released—this is not an exclusive list of exempt records:

1. All health or medical information that identifies specific individuals or patients, including medical records pertaining to physical or mental examinations or treatment, and including records that are submitted for insurance payment for medical expenses;
2. Documents maintained for purposes of the Americans with Disabilities Act;
3. Personnel records containing subjective (nonfactual) matters of opinion, including but not limited to, letters of reference, other documents concerning employee infractions and disciplinary actions, employee performance appraisals and opinions as to whether a person should be reemployed, and the employee's college transcripts; lab reports or test results concerning an employee; information on the race, color, religion, national origin, ancestry, political affiliation, sexual orientation or disability of an employee; military discharge of an employee, if other than honorable;
5. Records that are maintained by BMDWCA under a confidentiality agreement, as provided by the Public Utility Act, NMSA 1978, Section 62-6-17;
6. Attorney advice, attorney opinions or attorney work-product protected by the attorney client privilege or attorney work product;
7. "Protected personal identifier information" which: "means (1) all but the last four digits of a: (a) taxpayer identification number; (b) financial account number; or (c) driver's license number; (2) all but the year of a person's date of birth; and (3) a social security number;" Section 14-2-6 NMSA 1978.

8. Any other records that are deemed exempt under federal or state law.

## **VII. DENIAL AND REFERRAL OF REQUESTS:**

A. If, as a result of the review of a request, BMDWCA Public Records Custodian determines that disclosure of BMDWCA records should be denied in whole or in part, the Public Records Custodian shall submit that determination to the General Counsel or a BMDWCA attorney designated by the General Counsel, who will make an independent determination. If the General Counsel or BMDWCA attorney determines that BMDWCA records sought are exempt from disclosure, BMDWCA Public Records Custodian, in consultation with BMDWCA attorney, shall notify the requestor of the determination in the manner provided in Section VII(B) below;

B. If a written request is denied, BMDWCA Public Records Custodian in consultation with BMDWCA attorney shall provide the requestor with a written denial. The written denial shall:

1. Describe the records sought; and,
2. Be delivered or mailed to the person requesting the records within 15 days after the request for inspection was received, unless the requestor was notified additional time was needed.

## **VIII. FEES: 1.13.2 NMAC Fees Rule, is incorporated herein by reference, and made a part hereof.**

A. Copies of electronic records or electronic conversion of paper records: The Public Records Custodian may charge reasonable fees for copying electronic public records or converting paper public records into electronic pdf format, payable in advance, and, upon request, shall provide a receipt. NMSA 1978, § 14-2-9.B. Fees shall be remitted by either money order or check made out to Brazos Mutual Domestic Water Consumer Association. Unless a different fee is otherwise prescribed by 1.13.2 NMAC, entitled Fees for public records, the following fees apply to producing copies of electronic records, to paper records and to scanning paper records and making them into pdf files for electronic delivery.

- (1) 8 ½ x 11" - \$0.25 per page
  - (2) 8 ½ x 14" - \$0.30 per page
  - (3) 11" x 17" - \$0.35 per page
  - (4) portable document format file (pdf) from any source \$0.25 per page. pdf files can be sent electronically at \$0.25 per page. Sending pdfs by email may be at no charge for the email but there is still a charge for number of pages or number of pdf files. Additionally, pdfs can be transferred to a CD at the cost of \$25.00. CDs shall be provided by BMDWCA at \$0.25 per blank CD. External drives are prohibited.
- 1.13.2.17 NMAC.

For requests of 100 pages or more from information systems databases, BMDWCA shall provide an estimate to the requestor and may require a down payment of the estimate before beginning to retrieve records. BMDWCA may charge additional down payments as documents are retrieved and produced.