

GILA COUNTY, ARIZONA

BOARD OF SUPERVISORS POLICY

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I. Purpose

The purpose of this policy is to assist Gila County elected officials and departments with processing public record requests by defining the guidelines for non-commercial use requests and commercial use requests so as to protect the public's right to data, maximize cost recovery, and ensure the appropriate distribution of monies from the sale of public records. County employees responsible for maintaining official records are required to comply with this policy and Arizona law to protect the public's right to information.

II. Definition of Legal Responsibility

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

- The Public Records Act, ARS §39-121 through §39-124.
- The Open Meetings Act, ARS §38-431
- Various information-specific state statutes and administrative regulations designating particular information as either subject to public access or as being confidential.
- The body of law interpreting these provisions as reported in court decisions and opinions of the Arizona Attorney General.

Gila 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 ARS §39-101 and other state and federal laws. Other public records must be maintained in accordance with ARS §39-121.01(B) and (C) unless properly disposed of pursuant to ARS §41-1344, §41-1347, and §41-1351.

III. Definitions

A. Commercial Purpose

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

1. sale or resale or for the purpose of producing a document containing all or part of the copy, printout, or photograph for sale, or

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2. obtaining names and addresses from such public records for the purpose of solicitation, or
3. for any purpose in which the purchaser can reasonably anticipate monetary gain from the direct or indirect use of such public record.

Commercial purpose does not include use of public records as evidence or research in a judicial or quasi-judicial action in Arizona, or the publication of all or a portion of a public record in a newspaper for its news value.

B. Customized Public Record Request

Customized Public Record Request is a request for data that does not currently exist as requested. Customized public record requests include requests to generate new data, perform research projects, create new report formats, convert data to different medium or formats, or perform custom programming or extraction.

C. Electronic Information Resources

Electronic Information Resources refer to data and information generated, stored, and/or transmitted by information systems.

D. Information System

Information System is any mechanism used for acquiring, filing, storing, and retrieving an organized body of knowledge. Information systems include hardware, software, firmware, and procedures for use of the system by people, services intended to provide support to the operation of the system, any equipment or interconnected system or subsystems used in automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data or information.

E. Officer

Officer is any person elected or appointed to hold any elective or appointive County office and any chief administrative officer, head, director, superintendent or chairman of any County office.

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F. Other Matters

Other Matters includes any written records kept by an officer in the course of official business whether or not the records are required by law or are otherwise considered to be public records.

G. Person Requesting Data

Person Requesting Data includes corporations, associations, societies, organizations and individuals. Also referred to as requester.

H. Public Body

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, 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.

I. Public Data

Public Data is the data that is contained in or derived from public records. Also referred to as public information.

J. Public Record

Public Record includes all books, papers, maps, photos and documentary materials produced or kept by a public official in pursuance of a duty or to document the activities of a public body.

Few records in the possession or control of a public officer or body generally will *not* 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 or records that fall within the categories of “Confidentiality”, “Personal Privacy” or “Best Interest”.

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K. Reasonable Amount of Time

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 classification for an extended period of time on the basis that some reports may not be disclosed.

IV. General Policy

The following is established to manage the sale of a Gila County public record:

- The Public Records Act is to be interpreted liberally to facilitate broader access to public records.
- Public records and other matters in Gila County offices are presumed to be open for public inspection and shall be open to inspection at all times during office hours.
- All information is considered public record, with three broad exceptions:

Confidentiality: Disclosure is not required where prohibited by statute, court rule, or court order (e.g., social security numbers, court orders, etc.)

Personal Privacy: Some data need not be disclosed due to an individual's privacy rights (e.g., home address, telephone numbers, racial background, age).

"Best Interest": Disclosure may not be required if release of the information is not in the best interest of the public body (e.g. release would inhibit public safety effort or place the County at a competitive disadvantage).

- Generally records fall into one of three categories:

Must be released. Most records are "public records", i.e., none of the three exceptions apply, and therefore the information must be released.

May be released. Some records do not have to be released because one of the three exceptions applies, but the release of the information is within the County's discretion because release is not prohibited by state or federal law, court rule, or court order.

Must not be released. Some information cannot be disclosed because state or federal law, court rule, or court order prohibits its release.

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Generally:

- Gila County has the burden of proving that release of specific public information should not be allowed.
- Public record requests should be submitted to Gila County departments in writing. Department management has the discretion to accept verbal public record requests.
- A requester should complete the standard forms supplied with this Policy before any public record is released, *unless* the requester has already provided all the information in writing.
- The County no longer has control over the data once it has been released; therefore, collecting pertinent information from the requester is critical.
- 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 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 custodian is not required to allow the requester to make his own copies.
- The public does not have the right to demand access to records unless the records have a substantial connection with the public officer or body's activities, even if the records are located within the public entity's offices.
- Requesters only have a right to the data that is already maintained and in the format in which it is currently kept. A public entity is not required to convert data to a different format (e.g., *Microsoft Word* to *WordPerfect*) or convert the magnetic media to one that the public entity does not use (e.g., 3.5" diskette to 8" diskette).
- Access to a public record cannot be refused if the record still exists beyond its retention date, even if, according to the schedule, the document could have been destroyed.
- 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 of public body.

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- The County is not required to create a new record to meet a public record 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.

V. Policy for Special Types of Public Record Requests

A. Public Record Requests from the Media

Public Record Requests from the Media are not automatically considered commercial purpose requests. Requests submitted by the News Media are generally considered non-commercial purpose requests.

B. Request for Electronic Access to a County Database

Requests for electronic “remote” access to a County database should be carefully considered from several perspectives prior to implementation. The Information Technology Department should be contacted to discuss the technological and customer service perspectives. The Finance Department should be contacted to discuss cost recovery and the County Attorney’s Office should be contacted to discuss legal concerns.

C. Request for an Electronic Copy of a County Database

The greatest concern surrounding such requests is the accidental disclosure of proprietary software. The Information Technology Department should be contacted to discuss the technological concerns.

D. Request to Purchase a County Software Application

1. Requests to purchase County-developed software may involve questions of intellectual property rights and other laws. Contact the Information Technology Department and the County Attorney’s Office.
2. Proprietary software is generally *not* considered a public record.
3. Departmental management should contact either the County Attorney’s Office or the Information Technology Department for confidentiality agreements and non-disclosure forms prior to reviewing any County software applications with potential purchasers or re-sellers.

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VI. Cost Recovery

A. Non-commercial Public Record Request

- cost of materials (paper, diskettes, CDs, etc.)
- cost of the machinery to do the reproduction, and/or
- cost of labor to make copies

B. Commercial Public Record Request

- a reasonable fee for the cost of time, equipment and personnel necessary for the reproduction, and **(note: at the time the policy was adopted the charge was and is currently \$12.00 per hour which was the average lower level clerk salary. I always tell departments to charge at least 15 minutes of time if copying more than a few pages. 5/8/08 – I verified with Becka of Personnel that this rate still stands.)**
- the value of the reproduction on the commercial market as determined by the department responding to the request.

C. No County employee can demand or receive a fee or compensation for issuing certified copies of public records or for making a search for them, when they are to be used in connection with a claim for pension, allotment, allowance, compensation, insurance or other benefits which is to be presented to the United States or a bureau or department thereof.

D. The standard reproduction charge for 8½ x 11, black and white copies is \$0.25 per page. This copy rate will apply regardless of document source (i.e. paper, electronic, microfiche, etc.).

E. The standard reproduction charge for cassette tapes is \$2.00 per cassette.

F. The standard reproduction charge for CDs (computer discs) is \$5.00 per CD.

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VII. Elected Official or Departmental Responsibility

Each elected official or department is responsible for establishing a Release of Public Records process consistent with this policy. The process shall provide for maintaining and releasing public records and other matters, and for the method of determining the cost of reproducing records in response to a request. As stated (above), the standard reproduction charge for County departments is \$0.25 per page. Departments may also establish their own rates for copies of standard Public Records, such as police reports, and for complex reproduction requests, which may require the manipulation of data, a change in media type, or other time-consuming actions.

VIII. Forms

The attached forms are to be used for public record requests:

- Disclaimer - Indemnification – As of 2008, the disclaimer statement is included on each Verified Statement of Non-Commercial Purpose form or Verified Statement of Commercial Purpose form.
- Verified Statement of Non-Commercial Purpose
- Verified Statement of Commercial Purpose
- Addendum to Verified Statement of Commercial Purpose
- Gila County Customized Public Record Request Response

Adopted by the Board of Supervisors on the 20th day of June 2000.

Revision No. 1 adopted by the Board of Supervisors on the 7th day of June 2005. (Pricing was increased for cassette tapes and pricing was added for CDs. No revision number was assigned.)

Revision No. 2 adopted by the Board of Supervisors on the 13th day of December 2005. (No changes were made except a policy number was assigned and the format was changed to coincide with current and future Countywide policies. No revision number was assigned.)

GILA COUNTY CUSTOMIZED PUBLIC RECORD REQUEST RESPONSE

{Date}

{Name}

{Address}

RE: Public Records

Dear Sir or Madam:

I have received and reviewed your request for copies of {description of requested public record}. Arizona's Public Records law, A.R.S. §39-121 et seq., does not require a public office to create new documents to meet a public records request. Gila County is not, therefore, required to provide information in a requested format or on a specific type of media unless the requested format or media type is already being used by the custodian department. While we have provided you with copies of the information, the format and/or media type that you requested is not available. You are, of course, free to utilize the services of commercially-available conversion facilities to provide you with this service.

I hope that you will find this information helpful. If you should have any further comments or concerns, please feel free to contact me.

Respectfully,

{Department Head Name and Title}

**VERIFIED STATEMENT OF NON-COMMERCIAL PURPOSE
Public Record Request**



To: _____ [Designate Record Custodian]

Request is hereby made to inspect or reproduce the following public record(s) of Gila County. Indicate document name, page numbers, address and permit number where applicable. Attach 8.5" x 11" sheet if needed.

Pursuant to ARS §39-121.03, I verify that the record(s) are requested for the following reason(s): _____

I verify that the record(s) will not be used for a commercial purpose. Commercial Purpose is defined as: "the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public record for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public records."

I certify that all information provided is true and correct. I agree to pay the fee or deposit of \$_____ for these records. I also agree that the public records will not be transmitted or resold to any other person or entity without specific authorization from the County's record custodian. I agree to delete all data acquired via this request from my databases and all other electronic media forms upon completion of the purpose or use for which this request is made. I agree not to hold Gila County liable for any inaccurate or incomplete information I may receive. (See Disclaimer below.)

Applicant's Signature _____

Date _____

CONTACT INFORMATION:

Name: _____

Address: _____

Phone No.: _____ Fax No.: _____

An individual who knowingly falsifies his certificate for a document under these provisions is guilty of a class 6 felony. Further, any person who obtains a public record for a noncommercial purpose and uses or knowingly uses the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses them for a commercial purpose shall be liable to the state or the political subdivision for **the amount of three times the actual damages** if it can be shown that the public record would not have been provided had the commercial purpose or actual use been stated at the time of obtaining the records.

DISCLAIMER - INDEMNIFICATION

Requester understands and agrees that Gila County does not guarantee the accuracy of the data and information requested and hereby expressly disclaims any responsibility for the truth, lack of truth, validity, invalidity, accuracy, or inaccuracy of said data and information. Requester agrees to indemnify Gila County, its officers and employees from any liability which may arise from the Requester's unauthorized use or transmission of any such data or information in its actual or altered form.

VERIFIED STATEMENT OF COMMERCIAL PURPOSE

Public Record Request

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To: _____ [Designate Record Custodian]

Caution: Arizona Revised Statutes § 39-121.03(C) provides:

"A person who obtains public records for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the uses of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses them for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages **in the amount of three times the amount which would have been charged** for the public record had the commercial purpose been stated plus costs and reasonable attorneys' fees or shall be liable to the state or the political subdivision for the amount of **three times the actual damages** if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records."

A commercial purpose is defined by Arizona Statute as the use of a public record for the purpose of:

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

VERIFIED STATEMENT

I, _____, am the _____, of _____
(Name) (Title) (Company Name)

located at _____, which is engaged in the business of _____
(Address) (Nature of Business)

I am requesting to inspect or reproduce the following public record(s) of Gila County: _____

(State record being requested. Be specific. Use additional sheets if needed.)

I do hereby certify that the public records, which I have requested, are for the following purpose(s): _____

I certify that all information provided is true and correct and I agree to pay the fee or deposit of \$ _____ for these records.

Applicant's Signature

Date

STATE OF ARIZONA)
County of Gila) ss.

Notary Public

Date Commission Expires

VERIFIED STATEMENT OF COMMERCIAL PURPOSE

Public Record Request

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CONTACT INFORMATION:

Name: _____ Telephone No. _____

Address: _____

Phone No.: _____ Fax No.: _____

DISCLAIMER - INDEMNIFICATION

Requester understands and agrees that Gila County does not guarantee the accuracy of the data and information requested and hereby expressly disclaims any responsibility for the truth, lack of truth, validity, invalidity, accuracy, or inaccuracy of said data and information. Requester agrees to indemnify Gila County, its officers and employees from any liability which may arise from the Requester's unauthorized use or transmission of any such data or information in its actual or altered form.

ADDENDUM TO VERIFIED STATEMENT OF COMMERCIAL PURPOSE
Public Record Request
(Pricing Computation Worksheet)

The specific information which will be utilized from the record(s) requested on _____, is:
Date of Commercial Request

Which will be used for:

1. Sale or resale to _____ (identify market) for \$ _____ (price or cost) per _____.
2. Producing a document, information or other material containing all or a part of the information in the public record: (describe document or material and price):

3. Solicitation to _____ (identify market) for (what) _____ at \$ _____ (price).
4. Soliciting a business or commercial relationship. Describe and give price or value: _____

5. Other purpose: Describe and give price or value: _____

Applicant

Date