



Open Records Policy

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1 Purpose

This Policy establishes rules for providing public examination of and access to *Open Records* at Sanitation District No. 1 (SD1) to comply with Kentucky's Open Records Act, KRS 61.870 to KRS 61.884

All terms within this Policy in *italics* have their meanings defined in Section 4 Definitions.

2 Scope

This Policy applies to *public records*, regardless of format or media. Only *public records*, not exempted from public access, otherwise known as *open public records* or *open records*, will be released to a records requester.

3 Persons Affected

All SD1 employees who manage *public records* and/or facilitate public access to *open records* are required to read, understand, and act in accordance with this Policy.

4 Definitions

Commercial Purpose: The direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, lease of a service, or any use by which the user expects a profit either through commission, salary or fee.

Commercial purpose shall not include:

1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, claims settlement by the parties to such actions, or the attorneys representing the parties.

Custodian: The Official Custodian or any authorized person having personal custody and control of public records.

Official Custodian: The chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his or her actual personal custody and control.

Open Records or Open Public Records: Public Records not exempt from public access under KRS 61.878.

Public Records: All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.

Standardized Format: For paper format, the minimum standard format is a copy not less than 8 ½ inches x 11 inches with at least one (1) color on white paper. For electronic format, the minimum standard format is a flat file electronic American Standard Code for Information Exchange (ASCII) format.

5 Policy

5.1 Custodian of Public Records

The *Official Custodian of Public Records* at SD1 is the employee designated by the Executive Director to oversee the maintenance, care and keeping of SD1's public records.

5.2 Written Application for Inspection or Copies of Public Records

A written application may be required by SD1 for the inspection or copies of *open records*. At a minimum, this application shall contain the applicant's legibly printed name, the applicant's signature, description of records to be inspected, applicant's contact information, and whether the records will be used for a commercial or non-commercial purpose. SD1's Application Form may be obtained by the applicant at SD1's website or may be furnished to the applicant by SD1 upon request.

The written application or request form, when required, shall be directed to the *Official Custodian of Public Records* at SD1.

5.3 Providing Copies of Open Public Records without Written Application

An SD1 employee may allow inspection or provide a copy of *open records* to a verbal requester for commercial or non-commercial purposes without requiring a written application only when the request for inspection or copying occurs:

- a. in an emergency that poses an immediate risk to health, life, property, or the environment;
- b. in the field while SD1 employees are on or near the premises of the requesting party, or an agent of the requesting party;
- c. at an SD1 facility while the requesting party, or an agent of the requesting party, is in a meeting with SD1 employees;
- d. in the course of discussions with members of the SD1 legal department present;
or
- e. with the prior approval and consent of SD1's General Counsel.

Notwithstanding anything else contained in section 5.3, if there is a question or any uncertainty as to the exempt or nonexempt status of the *public records*, SD1 employees or agents shall require a written application.

5.4 Custody/Control Over Public Records Requested

The Records Management Department shall have custody and/or control over all of the *public records* at SD1 and will serve as the *Official Custodian of Public Records*. If a written application for *public records* is received by employee of SD1 outside the Records Management Department, that person shall notify the applicant that they are not the *Official Custodian of Public Records* at SD1 within the statutory time limit, and shall furnish the name and location of the *Official Custodian of Public Records* at SD1. Only the Records Management Department, as the *Official Custodian of Public Records* for SD1, shall release *open records* in response to a written application for *public records*.

If the Records Management Department does not have custody and/or control over the *public records* requested, SD1 shall notify the applicant and provide the name and location of the *Official Custodian* of the records requested, if known.

5.5 Use of Public Records by Applicant

If the applicant is requesting copies of *open records*, SD1 shall inquire if the applicant intends to use the *public records* for non-commercial or *commercial purposes*.

If the response for use is non-commercial, SD1 shall make no further inquiry regarding use.

If the response for use is for a *commercial purpose*, SD1 shall require a certified statement from the applicant stating the *commercial purpose* for which the *open records* shall be used. Further, SD1 shall require the applicant to enter into a contract with SD1 stating that the applicant is permitted to use the copies of *open records* for the stated *commercial purpose* for a specified fee.

5.6 Exemptions for Public Records

The Records Management Department, as the *Official Custodian of Public Records* for SD1, and/or the General Counsel's office shall review the written application and the *public records* collected in response to the application against the statutory exemptions prior to the release of any *open records*.

SD1 shall not permit the inspection or copying of statutorily exempted *public records* except upon the order of a court of competent jurisdiction.

5.7 Response to Application

SD1's Records Management Department, as the *Official Custodian of Public Records* for SD1, shall respond to each written application within the statutory time limit. SD1's response shall include:

- a. A copy of the *open records* requested;
- b. The place, time and date for inspection of the *open records* requested;

- c. A detailed explanation for further delay and the place, time, and earliest date on which the *open records* will be available; or
- d. A denial notice with the statutory exemption authorizing the denial and a brief explanation of how the exemption applies to the records requested.

5.8 Inspection

SD1's Records Management Department, as the *Official Custodian of Public Records* for SD1, shall arrange for any and all inspections of *open records*. The inspection shall occur during SD1's regular office hours or by SD1 sending copies of the requested *open records* to the applicant.

During inspection, SD1 shall permit the applicant to make abstracts and memoranda of the requested *open records*. No applicant shall be charged a fee for inspecting *open records*.

5.9 Physical Paper Copies

To ensure that the original paper records are not damaged or altered, SD1 shall copy or arrange for the copying of one (1) copy of all requested *open records*. SD1 shall not permit the removal of original copies of *public records* from its offices.

5.10 Fees for Copying (Electronic or Paper)

a. Non-Commercial Use

For *Standardized Format*, SD1 may charge a reasonable fee, not to exceed the actual cost of reproduction, including cost of media and any mechanical processing charges, for copies made of *open records* requested for use for non-commercial purposes.

For *Non-Standardized Format*, SD1 may charge a reasonable fee, not to exceed the actual cost of reproduction, including cost of media and any mechanical processing charges, plus staff costs for non-standard copies made of *open records* requested for use for non-commercial purposes.

b. Commercial Use

For *open records* requested for use for *commercial purposes*, SD1 may charge the cost of reproduction, creation, purchase or acquisition of the open public records requested including cost of media and any mechanical processing charges, plus staff costs, required to produce a copy of the *open records* requested.

SD1 will not create records to satisfy a request or tailor a format to meet the request of the applicant.

5.11 Advance Payment for Copies

SD1 may require advanced payment for fees, including cost of mailing.

5.12 Misuse of Open Records

SD1 shall consider it unlawful and may seek statutory damages against a person who obtains a copy of any part of an *open record* for a: 1) *commercial purpose*, without stating the *commercial purpose*; 2) if the person uses or knowingly allows the use of the *open records* for a different *commercial purpose*; or 3) non-commercial purpose, if the person uses or knowingly allows the use of the *open records* for a *commercial purpose*.

5.13 Unreasonable Burden or Disruption of Essential Function of Agency

SD1 may refuse inspection or copying of *open records* if the application places an unreasonable burden in producing *public records*, or if the *Custodian* has reason to believe that repeated requests are intended to disrupt the essential function of SD1.

5.14 Record Retention

SD1 shall retain a copy of the application, along with the *open records* released and any correspondence, in accordance with SD1's Record Retention Schedule.

5.15 Conflicts

If there is a conflict between this Policy and the Kentucky Revised Statutes, the Kentucky Revised Statutes shall be followed.

6 Policy Resources/Available Assistance

Questions concerning this Policy should be directed to the Records Management Department as the Official Custodian of Records at SD1.

7 References

Open Records Act, KRS 61.870 to KRS 61.884

8 Policy Effectiveness

On an annual basis, the Office of the General Counsel shall direct an assessment on the effectiveness of this Policy and its associated procedures.

9 Failure to Comply

Failure to comply with this Policy and associated procedures can result in disciplinary action and/or penalties.

10 Revision History

Date	Rev. No.	Revised By:	Description	Reference Sections
1/15/19	1	Board	Revise Sec. 5-1 to better define Custodian; Sec. 5.3 to provide clear exceptions for providing records	Sections 5.1, 5.3, 5.11

			without a written request; delete deposit from Sec. 5.11	