



POLICY # 9
Page 1 of 6

TITLE: **Access to Public Records**

MANUAL: Petaluma Health Care District's Policies & Procedures

Board Approval Date: April 15, 2014 Written by: R. Faith / S. Cochrane

Ad Hoc Committee Approval Date: March 18, 2014

Review Dates: September 19, 2017

January 15, 2019

POLICY

It is the policy of the Board of the Petaluma Health Care District to encourage public participation in the governing process and to provide reasonable accessibility to all public records except those documents that are exempt from disclosure by express provisions of law or considered confidential or privileged under the law.

GUIDELINES

The following guidelines and referenced procedures shall govern the accessibility for inspection and copying of all of the public records of the Petaluma Health Care District. These guidelines are to be administered by the Chief Executive Officer of the District.

APPLICATION FOR INSPECTION OF PUBLIC RECORDS

The Application for Inspection of Public Records form is attached to this document. We ask that individuals or entities requesting public records complete this application and submit it to the District. The District shall respond to the requestor within ten days by indicating whether or not the documents exist and will be made available. Actual production of the documents may take somewhat longer depending upon their ease of availability and staff workload. A party who has submitted a request may be notified within the ten-day period that additional time is necessary.

I. PURPOSE OF GUIDELINES

The purpose of these guidelines is to serve as general rules to be followed by those persons charged with administering the procedures for inspection and copying of the public records of the Petaluma Health Care District. Certain requirements of law must be observed relating to disclosure of records and to the protection of the confidentiality of records. These guidelines set forth the general rules contained in such laws.

S:\BOARD\GOVERNANCE\BOARD POLICIES\9. Access to Public Records policy.docx

II. DEFINITIONS

1. “Person” includes any natural person, corporation, partnership, limited liability company, firm or association.
2. “Public records” includes any writing containing information relating to the conduct of the business of the Petaluma Health Care District prepared, owned, used or retained by the District regardless of physical form or characteristics.
3. “Writing” means handwriting, typewriting, printing, electronic communications, copying, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, and other documents.

III. QUESTIONS OF INTERPRETATION

1. In case of any question as to the accessibility of the records of the District under these guidelines, records should not be made accessible to the public until such question has been determined by the Chief Executive Officer of the District. The decision of such officer is final unless overruled by the Board of Directors.
2. The District shall justify the withholding of any record by demonstrating that the record requested and withheld is exempt under “Records Subject to Inspection” of these guidelines, or that on the facts of the particular case, the public interest served by not making the record public outweighs the public interest served by the disclosure of such record.
3. In the case of any denial of an Application for Inspection or Copying of Records, the District shall notify the applicant in writing of the decision to deny the application for records and shall set forth the names and positions of each person responsible for the denial of the request.

IV. FOLLOWING PROCEDURES FOR INSPECTION AND COPYING

The procedures referred to shall be followed in all of their specifics at all times. Records of inspections shall be accurately maintained.

V. RECORDS SUBJECT TO INSPECTION

All public records of the District are subject to inspection pursuant to these guidelines except as follows:

1. Records set forth hereinafter as records subject to inspection only with authorization;
2. Records NOT SUBJECT to inspection (unless by Court order); or
3. Records that may be withheld by exercise of discretion.

VI. WAIVER OF EXEMPTION

If the District discloses a public record that is otherwise exempt from disclosure under the California Public Records Act, the disclosure may constitute a waiver of the exemption otherwise applicable to such record.

VII. RECORDS SUBJECT TO INSPECTION ONLY WITH AUTHORIZATION

Any records relating to clients of the Petaluma Health Care District (including but not limited to the client's records of admission and discharge, medical treatment, diagnosis and other care and services) shall only be made available for inspection and/or copying under the following conditions:

1. Upon presentation of a written authorization meeting all applicable legal requirements therefore signed by an adult client, by the guardian or conservator of his person or estate, or, in the case of a minor, by a parent or guardian of such minor, or by the personal representative of an heir or a deceased patient or client, and then only upon the presentation of the same by such person above-named or an attorney-at-law representing such person.
2. Upon presentation of a valid written order therefore issued by a Court of the State of California or of the United States of America (see reference to Subpoena Duces Tecum hereinafter) that specifically commands the District to disclose specified records.

VIII. RECORDS NOT SUBJECT TO INSPECTION (UNLESS BY COURT ORDER)

The following Records of the District are not subject to inspection by any person without a written order therefore issued by a Court of the State of California or of the United States of America (see reference to Subpoena Duces Tecum hereinafter):

1. Records pertaining to pending litigation to which the District is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title I of the Government Code of California, until such litigation or claim has been finally adjudicated or otherwise settled.
2. Personnel, medical or similar files of non-clients, the disclosure of which would constitute an unwarranted invasion of personal privacy of the individual or individuals concerned.

3. Records of complaints to or investigation conducted by, or investigatory or security files compiled by the District for correctional, law enforcement or licensing purposes.
4. Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or academic examination.
5. The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the District relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired and/or all contract agreements obtained.
6. Confidential documents relating to trade secrets of the District. Trade secrets are of unique value to the District, are important to the functioning of District plans and are considered to be confidential documents.
7. Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to , provisions of the Evidence Code of California relating to privilege. (Privileges are conditionally provided for all communications between lawyer and client, physician and patient and psychotherapist and patient).
8. Preliminary drafts, notes, or interdistrict, intradistrict or other memoranda, between districts, departments of the District, and/or other agencies, which are not retained by the District in the ordinary course of business, and provided that the public interest in withholding such records outweighs the public interest in disclosure.
9. Records in the custody of or maintained by legal counsel to the District.
10. Statements of personal worth or personal financial data required by any licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualifications for the license, certificate or permit applied for.
11. Records of state agencies related to activities governed by Articles 2.6, 2.8 and 2.91 of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, pertaining to MediCal provider contracting, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice or training to employees.
12. Employment contracts between the District and any public official or public employee, pursuant to Government Code Section 6254.8.
13. Government Code Section 6254.6 states that collection of private industry wage data for salary purposes, when such data is supplied under contract by the Bureau of Labor

Statistics, shall remain confidential and the identity of the employers shall not be open to the public.

14. Government Code Section 6254.9 states that computer software developed by the District is not, in itself a public record. The District may sell, lease, or license the software for commercial or noncommercial use. Any computer software that might be developed by the District is entitled to copyright protection and need not be disclosed as a public record. This Section also provides, however, that information stored in a computer does not necessarily become confidential because of the Section.
15. Any other records of the District that are not required to be disclosed pursuant to the California Public Records Act or other applicable statute as such statutes may be amended from time to time.

IX. DISCRETIONARY WITHOLDING OF RECORDS

In addition to the limitations upon disclosure of records set forth in these Guidelines, the District may, in its discretion, withhold inspection of any record of writing when the District determines that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest serviced by disclosure of the record. Such discretion shall be exercised by the District by and through the Chief Executive Officer, whose decision shall be final unless overruled by the Board of Directors.

X. COMPLIANCE WITH SUBPOENA DUCES TECUM

Upon receipt, the Subpoena Duces Tecum (a notice to appear and to bring records, or to produce records without appearance) should be forwarded to the Chief Executive Officer. While a Subpoena Duces Tecum is issued by a court, it is not an order of the court declaring that the particular records are subject to disclosure. Such records may still be subject to protection against disclosure by reason of the existence of a privilege or other legal excuse. Therefore, receipt of such a subpoena does not permit disclosure of records in and of itself and the following rules should be followed:

1. Subpoena in action where District is a party

- Immediately consult with legal counsel representing the District as to the proper response.

2. Subpoena in other actions

- If the records sought to be discovered (which are ordered to be produced) fall within one of the categories in Articles VII, VIII or IX above, consult with the District's counsel prior to responding to the subpoena.

- If the records sought to be discovered are those that can be inspected, it is sufficient compliance with the subpoena (if it seeks only records and does not specify that “testimony” or “examination upon such records” not be required) to deliver a copy by mail or otherwise, following the procedure set forth in “Application For Inspection of Public Records” attached hereto.

3. If only a portion of the records may be disclosed or inspected

- If only portions of any requested records may be disclosed or inspected, the disclosable portions should be segregated from the non-disclosable portions, and the segregated non-disclosable portions should be withheld unless and until a court orders their production.



APPLICATION FOR INSPECTION OF PUBLIC RECORDS

The District encourages public participation in the governing process and provides reasonable accessibility to all public records except those documents that are exempt from disclosure by express provisions of law or considered confidential or privileged under the law. The District has ten days to respond to any request for a copy of public documents by indicating whether or not the documents exist and will be made available. Actual production of the documents may take somewhat longer depending upon their ease of availability and staff workload. You may be notified within the ten-day period that additional time is necessary. To assist us in providing a timely response to your request, please fill out the form below and indicate the specific record/document you wish to review. If you do not know the precise identification of the document, please describe its contents as clearly as possible. Minutes of Board of Directors meetings, annual budget and audits are available on the PHCD website, www.phcd.org.

NAME _____

ADDRESS _____

TELEPHONE _____

FAX _____ E-MAIL _____

RECORD or DOCUMENT REQUESTED (Please be as specific as possible)

REASON FOR REQUEST
(Optional) _____

Fee for copying: 10 cents per page or contract rate DVD: \$5.00 each

DO YOU WISH A COPY OF THE RECORD(S) Yes _____ No _____

IF YES, HOW MANY COPIES _____ COST _____

DATE OF INSPECTION _____ DATE OF REQUEST _____

APPLICANT'S
SIGNATURE _____

DISTRICT USE ONLY:

IS WRITTEN AUTHORIZATION REQUIRED: Yes _____ No _____

If so, has written authorization been received and attached? Yes _____ No _____

DISTRICT OFFICER'S SIGNATURE _____