

Susquehanna River Basin Commission

a water management agency serving the Susquehanna River Watershed



**Policy No. 2009-02
September 10, 2009**

ACCESS TO RECORDS POLICY

1. Purpose and Scope

(a) This policy is intended to clarify existing practices of the Susquehanna River Basin Commission (Commission) regarding public access to Commission records and to assist staff in managing such records and disclosing them to the public.

(b) The Commission, as an independent compact agency, is not subject to any of its member jurisdictions' laws regarding public access to records. Nevertheless, the Commission wishes to adopt a policy to assure, to the maximum extent practicable, the availability of Commission records consistent with the Susquehanna River Basin Compact.

(c) This policy is intended to balance the benefits of general public access to agency records with other considerations of privacy, confidentiality, and security. There shall be a presumption under this policy favoring the release of or access to records and the Commission will endeavor to make as much information as possible available on its web site www.srbc.net, in an effort to eliminate the need for many records requests.

(d) This policy shall apply to all recorded information, regardless of whether the information exists in written or electronic format. Records or documents prepared by the Commission for routine public distribution are not covered by this policy.

(e) This policy is not an adjudication or a regulation; rather it simply establishes a framework within which the Commission will exercise its administrative discretion on records access issues. The Commission therefore reserves the discretion to deviate from this policy if circumstances warrant.

(f) The following types of records are not subject to public access under this policy:

- (1) Records related solely to the internal personnel rules, records and practices;
- (2) Records specifically exempted from disclosure by statute, regulation, court rule, court order, or common law privilege;
- (3) Trade secrets or any other confidential business information for which confidentiality is afforded pursuant to Section 2 of this policy, that is:

- i. obtained from a person requesting confidentiality; and
 - ii. constitutes information that the disclosure of which would cause substantial injury to the competitive position of the subject enterprise;
- (4) Copyrighted material or information subject to a licensing agreement, the disclosure of which would violate the terms of such agreement;
- (5) The internal pre-decisional deliberations of the Commission, its members, alternates, officers, legal counsel and employees, or such pre-decisional deliberations with another agency, its officers, legal counsel and employees, relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy, or a course of action; any research, memos or other documents used in the pre-decisional deliberations;
- (6) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocational rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information;
- (7) The following personal identification information:
 - (i) A record containing all or part of a person's Social Security number; home address; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number; and
 - (ii) A spouse's name; marital status; beneficiary or dependent information;
- (8) Personnel information including, but not limited to such records as letters of reference or recommendation; performance ratings; test results; employment applications; performance evaluations; grievance material; disciplinary, demotion or discharge information; and academic transcripts;
- (9) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings; (B) deprive a person of a right to a fair trial or an impartial adjudication; (C) disclose the identity of a confidential source; (D) disclose investigative techniques and procedures; or (E) endanger the life or safety of law enforcement personnel. This includes any such records compiled by the Commission itself for the enforcement of its own regulations, orders or docket conditions;

- (10) Records and data that would impair present or imminent contract awards or negotiations, including records relating to contracts with independent contractors providing personal or professional services to the Commission; and
- (11) Records relating to emergency procedures, buildings, facilities and critical infrastructure, including locational information, for which confidentiality is afforded pursuant to Section 2 of this policy, and the disclosure of which would compromise homeland security, facilitate the planning and execution of terrorist or criminal acts, or otherwise endanger the public health, safety and welfare. Critical infrastructure includes systems, assets, places or things, whether physical or virtual, or publicly or privately held, that are so vital to the public that the disruption, incapacitation, or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the public.

(g) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion or redaction of the portions that are exempt under this section.

2. Procedure for Confidentiality Request

(a) With respect to records referred to in Section 1(f)(3) hereof, and records referred to in Section 1(f)(11) hereof, no such records shall be considered confidential unless the submitter of such information shall also file an accompanying written statement requesting confidentiality and explaining the reasons therefore. In doing so, the submitter shall separate the “confidential” information from other general information. The separated information may be submitted in electronic or hard copy form. In whatever form submitted, the Commission will store the information in a manner designed to preclude public access. The Executive Director shall have the discretion to review the submitted information and decide whether the request for confidentiality is appropriate under the criteria set forth in Section 1(f) (3 and 11). Unless the submitter is otherwise notified within 30 days, the information shall be treated as confidential.

(b) Notwithstanding paragraph (a) of this Section, and the fact that the Commission has built many safeguards into its computer network, the Commission cannot guarantee the security of information submitted and stored in electronic form.

(c) Nothing in this policy shall be construed as preventing the Commission from sharing information, whether or not classified as confidential, with agencies of the Commission’s member jurisdictions in connection with the exercise of their official functions and authority. In the case of such sharing, the Commission shall notify the recipient agency when such information is classified as confidential by the Commission. The extent to which such information is afforded confidential protection by such agency shall be governed by its applicable statutes and regulations.

(d) No retroactive requests for confidential classification of information will be accepted.

(e) The Commission reserves the right to return any information for which confidentiality is requested that the Executive Director determines to be unnecessary for review of the matter relating to the submission.

3. Procedure for Records Request

(a) A written request shall be submitted in person, by mail, by facsimile or by any other electronic means. At the discretion of the Commission, a written request may be required on a form provided by the Commission. The requester must provide a reasonable description of the records or materials sought so that such records or materials may be located without undue search or inquiry. Requests that are too general or broad, such as “all records related to X project,” will not be honored.

(b) Such written requests shall be directed to the Executive Director, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, emailed to srbc@srbc.net, or faxed to 717-238-2436.

(c) The Executive Director, or a designee who shall act as the Commission’s Access to Records Officer, shall promptly respond to any request reasonably describing the record or records sought, taking into consideration the nature and scope of the materials requested. If the requester cannot be provided with access to the record sought within a reasonable period of time, a written acknowledgement of the request shall be furnished the requester along with a statement of the approximate date when a response will be made by the Commission staff. A response from the Executive Director, or designated officer, may include either making the requested records available for inspection or copying, or denying access to the requested records in whole or in part with an explanation in writing of the reasons therefore.

(d) In responding to a request, the Commission shall not be required to create a record that does not already exist or compile, maintain, format or organize a public record in a manner in which the Commission does not currently do so.

(e) Records or materials will be available for inspection and copying in person during normal business hours. Copying may be done by the requester using portable copying devices or can be done by Commission staff. In all cases, an authorized Commission staff person shall supervise the process of inspection and duplication. No records may be removed from the Commission’s offices for any reason.

(f) Requests for records that originate in or concern matters that originate in another department or agency may be forwarded to the department or agency primarily concerned and the requester so notified.

4. Costs Associated with Processing Requests

(a) The requester shall pay fees in accordance with the “Records Processing Fee Schedule” adopted by the Commission.

(b) Fees shall be calculated so as to reflect the actual costs to the Commission of processing requests and shall be of two types:

(1) The cost to reproduce the records, either in hard copy or electronically; and

(2) The cost to search and prepare records for release.

(c) The Commission reserves the right to limit the number of copies of any document that will be provided to any one person.

5. Denial of Access or Confidential Treatment/Appeals

(a) If notified by the Executive Director that the information submitted does not qualify as “confidential,” a submitter shall have 30 days from date of denial to file an administrative appeal pursuant to 18 CFR Section 808.2. During this 30-day period, and pending any appeal that is filed, the Commission shall continue to maintain the confidentiality of the information.

(b) A requester who has been denied access to records by the Executive Director, or a designated officer, shall have 30 days from the date of the action to file an administrative appeal pursuant to 18 CFR Section 808.2.

(c) In the event of an appeal by the requester where denial of access is based on the criteria set forth in Section 1(f) (3) or (11) hereof, the Commission shall, within 10 days, notify the submitter that made the confidentiality request of the pending appeal. The submitter shall have 15 days from the date of notification to provide a written argument explaining why the confidentiality of the information shall be maintained and shall serve a copy of this argument on the requester. The requester shall have 15 days from the date of service to respond to this written argument.