

Management Procedure

PUBLIC RECORDS REQUEST

It is Valley Metro's policy to comply with the Arizona public records law in a timely, accurate and complete manner. This is designed for anyone requesting or processing a Public Records Request; if you have a question that is not answered in this procedure, contact Valley Metro's Communications Manager and/or General Counsel.

Staff should always exercise sound judgment in preparing documents and emails produced for and in association with Valley Metro business.

WHAT IS THE PUBLIC RECORDS LAW AND HOW DOES IT APPLY TO VALLEY METRO?

The Arizona public records law, Arizona Revised Statutes § 39-121 et seq., applies to all public entities, including Valley Metro. One of the purposes of the law is to ensure that government entities are accountable to the public; the law does this by giving the public the right to view most, but not all records concerning the agency's activities.

DEFINITION OF PUBLIC RECORD

Most records in the possession of a Valley Metro employee are considered to be a "public record."

They include:

1. A record made by a public official in pursuance of a duty or to serve as an official transaction for public reference. Examples include: staff reports, public announcements and letters to outside parties.
2. A record that is required by law to be kept, is necessary to be kept in the discharge of a duty, or evidence of something written, said or done. Examples include minutes of meetings, meeting notices, and public hearing information, etc.
3. A written record of transactions of a public officer in his/her office. Examples include memos, file notes, and internal communications including emails.
4. Records required to be disclosed pursuant to statute, the Arizona courts or opinions of the Attorney General's Office. Examples include records of expenditures of public funds (including salaries of public employees), accounting records and audits, public safety investigations, electronic databases, budgets, final lists of candidates who are interviewed for a public employment position, and injury reports.

There is a general belief that records located in a public office are public records; however, certain records or information may not be subject to disclosure because exceptions may apply. There are three types of public records identified below. If there is still a question as to the validity of the request, contact Valley Metro's General Counsel.

1. **Must be released:** Most records kept in the normal course of business are public records and are subject to disclosure.
2. **May be released:** Some records do not have to be released, but the release of the information is within Valley Metro's discretion because release is not prohibited under state or federal law, court rule, or court order.
3. **Must not be released:** Some information cannot be disclosed because such release is prohibited under state or federal law, court rule, or court order.

RECORDS NOT SUBJECT TO PUBLIC RECORDS REQUESTS

Private or Personal Documents are not Public Records. The availability of records for public inspection has limits.

Arizona's public records law only requires that public officials maintain records reasonably necessary to provide knowledge of all activities they undertake in the furtherance of their duties.

Thus, documents of a purely private or personal nature do not qualify as public records. This is true even if a government official, in a government office, using government supplies and equipment with the expenditure of government funds, creates the documents. See *Griffis v. Pinal County*, 215 Ariz. 1, 156 P.3d 418 (2007).

- a) **Confidentiality:** Disclosure is not required where prohibited by statute, court rule, or court order.

Examples include:

- Attorney-Client communications;
- Entity identifying information, defined by A.R.S. § 13-2001;
- Social security numbers;
- Executive Session minutes; and
- Victim information.
- A list of documents that may be kept private is included in the Arizona Attorney General publication Arizona Agency Handbook, which is accessible on the Internet at www.azag.gov.

- b) **Personal privacy:** If an individual's privacy rights outweigh the public's right to know, some data may not be released. Information is private if it is (1) not freely available to the public, and (2) intended for, or restricted, to the use of a particular person or group or class of persons.

Examples include:

- Home address or home telephone numbers;
- Birth dates;
- Credit or debit card numbers;
- Insurance-account numbers and information;
- Financial-account numbers and information; and
- Floor plans or blueprints will not be released without the written permission of the owner and/or design firm in order to protect copyright and personal privacy interests of the owners.

c) **Best interest:** Disclosure is not required if release of the information is not in the best interest of the public body.

Examples include:

- Background investigations;
- Records where release would inhibit public safety efforts; and
- Victim or witness personal information;
- Harm negotiations or put a Valley Metro contractor at a competitive disadvantage.

Redactions. Records that are subject to being released but contain information that is private, confidential or best withheld in the interest of the public will require *redaction*, meaning that the non-releasable portions of the document will be removed or otherwise obscured so that it cannot be read.

Graphics files are not public records. Valley Metro graphics files, such as the Valley Metro logo and photo simulations, are not public records. All requests for Valley Metro logos, art and photography should be referred to the Communication Department and Marketing Department.

HOW DO I MAKE A PUBLIC RECORDS REQUEST?

- 1) Visit http://www.valleymetro.org/news_media/public_records_requests
- 2) Obtain a public records request [form](#).
 - Form should be emailed to info@valleymetro.org
 - Delivered in person or mailed to Valley Metro at 101 N. 1st Avenue, Suite 1300 Phoenix, AZ 85003 (Attn: Public Records Request)
 - Faxed to 602.523.6095

RESPONDING TO A PUBLIC RECORDS REQUEST

1) The appropriate department can fulfill routine requests.

Examples of a routine request:

- Service contract from Procurement
- As-built plans from Design.

2) If the request:

- involves several divisions or is complex

- is for an incident video
- is for a draft document
- is involving an active procurement
- Or you are unsure of how to respond, contact the Communications Department.

3) Contact General Counsel when:

- the request involves a matter currently in litigation or one that is likely to lead to litigation
- the request is a memo or other document that contains legal advice from the Valley Metro General Counsel
- the request is for personnel records or the email records of a specific employee.

PROCESSING TIME FOR PUBLIC RECORDS REQUESTS

Time Permitted for Processing	Allow 15 to 20 calendar days for a request to be processed. Do not call to check the status of a Public Records Request until 20 days after the request was submitted.
Notification	If a request will take more than 20 days to process, Valley Metro will notify the requestor in writing.
Expedited Requests	<p>In most cases, requests are processed in the order they are received.</p> <p>A party may request that Valley Metro expedite a Public Records Request.</p> <p>Valley Metro exercises its discretion to grant an expedited request when the requesting party is involved in:</p> <ul style="list-style-type: none"> • An administrative hearing, or • A juridical proceeding. <p>Whether Valley Metro can comply with an expedited request will depend on:</p> <ul style="list-style-type: none"> • The size of the request; • The location of the records; and • The current backlog of other public records requests.
Delays	Some requests may take longer than others to process, because processing time depends on the nature and scope of the request, as well as the location of the records.

In all cases, records must undergo a legal review before the release or review of materials to the public in order to avoid disclosure of information protected by statute.

TYPES OF PUBLIC REQUESTS:

Types of Public Records request includes the following: Custom, Email, Plans and Specifications, Video, Graphic Assets and Commercial.

CUSTOM REQUESTS

A custom request is defined as a record or format that does not currently exist. Valley Metro may charge a fee to recover costs for one or more of the following: reproduction costs, searching costs, data maintenance costs, cost of services, and/or the fair price agreed upon by the parties. If there is fulfillment of the request, Valley Metro will contact the requestor with an estimated cost before it is produced.

Arizona public records law does not require Valley Metro to:

- Create a new record
- Create new report formats
- Convert data to different medium or formats
- Perform research projects
- Perform custom programming or extraction.

Custom requests may be declined. However, the CEO, General Counsel or responsible Division Head may choose to fulfill a request for a non-existing record or for existing information in a different format or medium when it is in Valley Metro's best interest to do so.

Requests for documents to be provided in electronic format may be considered a custom request if responding to the request requires the creation of an entirely new record and not simply redacting information from an existing record.

Factors to consider in evaluating whether to fulfill a custom request include the availability of resources (personnel, equipment, etc.), the data subject to disclosure, production costs, maintenance costs, and the impact on the department and Valley Metro.

A custom request will be evaluated to determine if they are for commercial or non-commercial purposes.

Once a custom document is created it then becomes a public record subject to the normal public records requests guidelines.

EMAIL REQUESTS

If a broad email request is made, ask the requestor to narrow their request to a specific timeframe and a specific topic. Keep in mind that Valley Metro retains email messages for approximately 32 days; however, if an email has been printed and saved because of its substantive content, then it is subject to disclosure in accordance with policy guidelines and the Arizona public records law.

If the request is made for email of a specific Valley Metro employee, notify the employee that the request has been made and contact the Chief Operating Officer to collect emails during the requested time period. Instruct the employee not to delete any email messages until the request has been fulfilled.

The messages will be reviewed consistent with the aforementioned guidelines and as indicated below:

- email messages embodying policy, opinions, directions, etc.
- email messages with outside persons regarding proposals and other emails that are exclusively personal in nature (much like phone calls) would not be a public record.

VIDEO REQUESTS

Video is a public record and may be requested from digital systems on transit vehicles that Valley Metro owns, or at transit facilities where Valley Metro provides service. Valley Metro maintains these videos from service operations and facilities for a limited period of time. Video is overwritten as follows: train every 48 hours, bus every 72 hours and station platforms/rail park-and-rides every 30 days.

Valley Metro will exercise these actions after receiving a public records request for video:

- Acknowledge receipt of the request for video.
- Locate and review the video segment requested, if available, and furnish the video within a reasonable timeframe.
- Provide the requestor with an opportunity to better define the request should the original request be ambiguous, general or overly broad. If the requestor is unable to revise and clarify the incident and video requested so that Valley Metro cannot reasonably identify the video, Valley Metro may deny the request.

In the event of a criminal investigation:

- Valley Metro will notify and coordinate with law enforcement.
- Valley Metro will not release any video until external (law enforcement) and internal (Valley Metro) investigations are complete.
- Valley Metro will make a determination on the release of the video based upon the nature of the act and in compliance with applicable law.

Valley Metro video review procedures:

Valley Metro Review Committee, consisting of the CEO, General Counsel, and department management level representatives from Safety and Security, and Communications (the "Committee"), will review the requested video prior to production. Communications, working conjunction with General Counsel, will prepare video and present it to the Committee for review and consideration. A final determination will be made by the Committee to release the requested video or withhold, redact or otherwise deny portions of the video. With denial of release, explanation is warranted including legal authority for the denial.

COMMERCIAL REQUESTS

This is 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
- Obtaining names and addresses from such public records for the purpose of solicitation
- For any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record.

People who are regularly engaged in gathering, reporting, writing, editing, publishing or broadcasting news to the public are not considered commercial users.

Requests of copies of public records for a commercial purpose must provide a certified statement setting forth the commercial purpose for which the records are requested. Upon being furnished a signed document, Valley Metro will assess a fee that includes the following:

The charge for commercial public records requests will be based upon:

- The value of the video or reproduction on the commercial market as best determined by the public body
- A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.

The fee for this type of request may include costs for reproduction, searching, data maintenance, and the value of the reproduction on the commercial market. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs. A.R.S. § 39-121.03(D).

TYPES OF FEES

Fees can be charged for most responses to public record requests. However, fee is calculated dependent upon the type of public records request. A fee may not be charged for certain public record requests. Specifically, requests concerning a claim for a pension, allotment, allowance, compensation, insurance or other benefits which are to be presented to the United States government or a bureau or department thereof must be honored free of charge.

The following applies to all public records requests:

1. The public records requestor will be notified when materials are available for pick-up. Payment is due when the item(s) are received; however, at Valley Metro's discretion, payment for public records requests may be required in advance.
2. All charges must be paid in full prior to receiving documents and paid with cash, in exact change, or a check payable to Valley Metro RPTA.

NON-COMMERCIAL REQUESTS

Valley Metro can impose a fee to recover the cost of reproduction. This may include such costs as paper and staff time. The cost to search for material cannot be recovered.

Emailing Documents	If applicable, cost(s) for staff time
Photocopies of Routine Records	First two (2) pages at no cost, then \$0.50 per page
Copies of Non-routine Records	\$0.50 per page
Postage for Mailing Documents	All USPS postage costs incurred by Valley Metro
Data on CD	\$10.00 per CD
Video	\$10.00 per DVD plus cost of staff time
Staff Time	\$45.00 per 15 minutes for any amount of time after an initial 30 minutes

Individual departments should be consulted for fees associated with special formats such as oversized materials, etc.

FEDERAL REPORT

New Starts Report	\$50 (Commercial use \$200)
Environmental Impact Documentation in Print	\$50 per vol. (Commercial use \$150)
Environmental Impact Documentation on CD	\$10 per vol. (Commercial Use \$150)

GRAPHIC ASSETS

Valley Metro assets, including photography and system maps, will be charged at \$100 per use, per record. If multiple records or uses are requested, the fee will compound accordingly.

PLANS AND SPECIFICATIONS

Pre-final and Final Design Submittals in Print	\$25 per set
Pre-final and Final Design Submittals on CD	\$10 per set

VIDEO REQUESTS

This video is available as a public record and costs \$10 per DVD. If video not previously archived by Valley Metro is requested and still available within the system, the requestor may be required to pay for the reallocation of staff time to download the video at a cost of \$100 minimum and \$100 for every quarter-hour expended beyond the first quarter-hour.