

SOUTH METRO FIRE RESCUE FIRE PROTECTION DISTRICT

SMFR Resolution No. 2021-12

**RESOLUTION DESIGNATING THE
OFFICIAL CUSTODIAN OF RECORDS AND ADOPTING A
POLICY ON RESPONDING TO OPEN RECORDS REQUESTS**

WHEREAS, South Metro Fire Rescue Fire Protection District ("District") is a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Article 1, Title 32, Colorado Revised Statutes; and

WHEREAS, pursuant to §32-1-1001(1)(h), C.R.S., the Board of Directors of the District is responsible for the management, control and supervision of all of the business and affairs of the District; and

WHEREAS, pursuant to §32-1-1001(1)(i), C.R.S., the Board of Directors of the District has the authority to appoint an agent; and

WHEREAS, the Board of Directors of the District has determined that it is appropriate to designate an official custodian of the District's records for the protection of such records and in order to permit their inspection by persons entitled to examine and copy such records in an orderly fashion; and

WHEREAS, the Board of Directors of the District has determined that it is appropriate to adopt a policy on responding to open records requests; and

WHEREAS, the Board of Directors of the District fully supports, and complies with, all Federal and State laws relating to the retention, protection and disclosure of District records including, but not limited to, the Colorado Open Records Act, Title 24, Article 72, Part 2, C.R.S. ("CORA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the Privacy Rule promulgated by the U.S. Department of Health and Human Services which interprets and implements HIPAA; and

WHEREAS, it is the policy of the District that all public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law; and

WHEREAS, public records are defined by CORA as all writings made or maintained by the District, regardless of the format or medium of the records, subject to certain exceptions, and public records expressly include e-mail communications.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the South Metro Fire Rescue Fire Protection District that:

1. Official Custodian. The Fire Chief's Executive Assistant is hereby designated as the Primary Official Custodian responsible for the maintenance, care and keeping of all records of the District, except as provided herein. The Official Custodian shall have the authority to designate such agents as deemed appropriate to perform any and all acts necessary to enforce and execute the provisions of this Resolution.

2. Adoption of Open Records Policy. The Policy on Open Records Requests, attached hereto as Exhibit A and incorporated herein, is hereby adopted.

3. Repeal of Prior Resolutions. All Resolutions of the Board inconsistent with this Resolution are hereby repealed to the extent of such inconsistency and all actions of the officers, agents and employees of the District which are in furtherance of or in conformance with the purposes and intent of this Resolution are hereby in all respects ratified, approved and confirmed.

4. Severability. If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

5. Effective Date. This Resolution shall take effect and be enforced immediately upon its approval by the Board of Directors of the District.

PASSED AND ADOPTED by the Board of Directors of the South Metro Fire Rescue Fire Protection District this 06 day of December, 2021.

SOUTH METRO FIRE RESCUE
FIRE PROTECTION DISTRICT

By: 
Jim Albee, Chair

Attest:


Hank Eng, Secretary

EXHIBIT A
OPEN RECORDS POLICY

SOUTH METRO FIRE RESCUE

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Policy & Procedure #:

Subject: Open Records Requests

Division: Executive

Effective Date: 03/06/12

Revision Date: 10/02/23

Accreditation: 1A.2

Scope: All personnel.

Policy/Procedure:

Authority & Responsible Areas

Most records retained by SMFR are considered public records under the Colorado Open Records Act, Title 24, Article 72, Part 2, C.R.S. ("CORA") and must be made available to the public when requested in a timely manner.

Public records are defined by CORA as all writings made, maintained or kept by SMFR, including books, papers, maps, photographs, cards, tapes, video recordings, audio recordings, or other documentary materials, regardless of physical form or characteristic, subject to certain exemptions. Public records include all items distributed for use or consideration in public meetings. All correspondence (written or electronic) of elected officials is considered a public record unless it is: unrelated to the official's public duties; from a constituent and implies an expectation of confidentiality; "work product"; and/or otherwise excluded under CORA. Certain requests for records may be denied under specific circumstances including documents related to on-going investigations, personnel files, real estate appraisals, trade secrets, deliberative board documents, and medical records.

Generally, architectural and engineering drawings reviewed by SMFR's Fire Marshal's Office for permitting purposes are considered public records unless protected by a Non-Disclosure Agreement (NDA) or other copyright laws. SMFR will make a reasonable attempt to check for any NDAs and/or contact the architect/engineer of record prior to releasing the drawings so that the architect/engineer can begin legal proceedings to protect the documents. If the architect/engineer claims a copyright privilege, he/she shall indemnify SMFR for any costs associated with legal proceedings related to the open records request, including claims of improper denial of the request, in coordination with SMFR's legal staff.

By separate resolution of the SMFR Board of Directors, the Fire Chief's Executive

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Assistant has been designated as the Official Custodian of Records pursuant to CORA. In order to address public records requests in an orderly fashion, permit their inspection by persons entitled to examine and copy such records, and also provide appropriate protection of such records, the following procedures shall be followed.

The SMFR Custodian of Records has delegated the authority to respond to incident-related records requests to the Fire Marshal's Office, EMS Bureau, Communications Bureau, and Emergency Dispatch, as follows:

- All requests for land and occupancy information, inspection history, or similar shall be forwarded to the Fire Marshal's Office for processing.
- All requests for fire, explosion or hazmat incident reports, where an investigator responded and is conducting the incident investigation, shall be forwarded to the Fire Marshal's Office's investigations unit for processing. If an investigator is not involved, then basic incident report requests can be processed by any other designee of the Custodian of Records.
- All requests for EMS records or other patient-related information shall be forwarded to the EMS Bureau for processing.
- All requests for incident photos and/or videos, not related to an investigation report, shall be forwarded to the Communications Bureau for processing.
- All requests for 911 call recordings shall be forwarded to Emergency Dispatch for processing.

The Custodian of Records shall have the authority to designate such agents as he or she shall determine appropriate to perform any and all acts necessary to enforce and execute the provisions of this Policy.

Submittal & Review of Requests

All records requests shall be submitted using the designated records request form on SMFR's website, except customers who are unable to submit a records request online may submit their request verbally to the Custodian of Records or designees, unless the request is for an EMS patient-related record. The Custodian of Records will document verbal records request for the customer. The fees set forth below shall apply regardless of how the request is submitted. Records requests should be as specific as possible in regard to the information that is being requested. Unless otherwise required by law, the requesting party does not need to state a reason for the records request. Except when a requested record is confidential and accessible only on the

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basis that the requester is the person in interest, no form of identification shall be required to request or inspect public records.

Requests for EMS patient-related records shall identify the requesting party's affiliation with the patient, the incident date, any identifying patient information, and the purpose of the request, if necessary, to determine if the requesting party is authorized to receive the EMS patient-related records. Additionally, a properly executed HIPAA Authorization to Release Protected Health Information (PHI) must be provided to the EMS Bureau.

Regardless of how the request is received, requests shall be documented in the appropriate secured database for tracking purposes. The EMS Bureau maintains a secure database for EMS-related requests. The Fire Marshal's Office and the Official Custodian of Records maintain a secure database for their processed requests.

Requests for 911 call recordings and paper CAD reports shall identify the requesting party's relationship to the subject(s) involved in the call; the reason for the request; the nature, date and location of the incident; and the names of the subjects involved (if known). Any information that is not subject to disclosure under CORA, including without limitation the caller's name, telephone number and address, and HIPAA protected health information, will be redacted from the copy of the recording and paper CAD report before it is provided. In addition, the Custodian of Records or designees may deny a request for 911 call recordings and/or CAD reports if they relate to an investigation conducted by a sheriff, prosecuting attorney, or police department or an investigatory file compiled for other law enforcement purposes. Completed recording requests are maintained in a secure database.

Upon receiving a records request, the Custodian of Records or designees shall review the request and the desired records to determine whether they are subject to disclosure under CORA and HIPAA. Any questions regarding whether the records should be produced shall immediately be forwarded to SMFR's legal counsel who shall resolve questions regarding SMFR's obligations under the applicable Federal and/or State law(s).

- If SMFR's legal counsel determines SMFR is not permitted by Federal or State law to comply with the records request, legal counsel shall assist SMFR's Custodian of Records or designee in providing a written response to the party submitting the records request stating the legal basis upon which the records request is being denied.
 - o The written statement regarding the reason for denial of the release of records is only required when requested by the person who is denied access, and it must be provided within 3 working days of the request.
- Following the denial of a request for a record, upon receipt of the required written

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notice from the requesting individual that he or she will seek relief from the District Court, the Custodian of Records will attempt to meet in-person or speak by telephone with the requesting individual. SMFR personnel are encouraged to utilize all possible means to attempt to resolve the dispute during this time period and will provide a written summary of SMFR's position at the end of that period to the requestor and to the Board of Directors. No phone or in-person conference is required if the written notice indicates that the requestor needs access to the record on an expedited basis.

- If SMFR is permitted to comply with the records request, SMFR's Custodian of Records or designee shall assemble the requested records for inspection and/or copying in accordance with applicable Federal or State law. It should be determined if any exempt records or specific, protected information such as juvenile, social security or patient information needs to be redacted. The method of redaction should be appropriate to the document requested, but must ensure the original record is left in its original format and the protected information cannot be "uncovered" by the requesting party.
 - o The Custodian of Records or designee may set the time during normal office hours and the place for records to be inspected and require that the Custodian of Records or designee or other delegated employee be present while the records are examined.
 - o Pursuant to CORA, all records must be made available for inspection within three (3) working days of the Custodian of Records' receipt of the request, unless extenuating circumstances exist. The deadline may be extended by seven (7) working days if extenuating circumstances exist and the requesting party is notified of the delay within three (3) working days of the Custodian's receipt of the request.

Copies & Fees

- Standard Allowable Fees
 - A copy fee of \$0.25 per standard page will be charged. A standard page shall mean an 8.5-inch by 11-inch black and white copy. The charge for providing a copy, printout or photograph of a public record in a format other than a standard page will be assessed at the actual cost of production, except that if a record exists in a digital or electronic format no per-page fee will be charged for providing records in the same digital or electronic format. If a copy, printout or photograph of a public record is necessary or requested to be provided in a format other than a standard page, or must be copied at an outside facility, the costs will be assessed at the actual cost of production. This includes video file formats that may need to be copied and in a format other

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than a printed standard page.

- When the location or existence of specific documents must be researched and the documents must be retrieved, sorted or reviewed for applicability to the request, and such process requires more than one (1) hour of staff time, the Custodian may charge a research and retrieval fee not to exceed thirty-three dollars and fifty-eight cents (\$33.58) per hour, or the maximum amount allowed by the Director of Research of the State Legislative Council, whichever is greater.
 - If any requested records are protected by a privilege (for example, work product or attorney-client privilege), SMFR may charge the actual costs of creating a privilege log identifying the privileged records, including the actual costs of legal assistance or review if necessary to create the privilege log.
 - Any cost for transmitting the requested records will be charged at the actual cost of such delivery, except transmission fees will not be charged for transmitting any record via e-mail, when requested.
 - If data must be manipulated in order to generate a record in a form not otherwise used by the SMFR, such data manipulation will be assessed at the actual costs to the SMFR; however, the District is in no way obligated to generate a record that is not otherwise kept, made or maintained by the SMFR.
 - SMFR may require a ninety percent (90%) deposit of the estimated fees prior to commencing work to produce the records. Payment of the remainder of the fees, including all actual costs exceeding the estimated amount, must be made prior to the time of inspection or release of the final work product or copies.
- Fee Exceptions
 - There are no fees charged when the processing time to fulfill the records request takes up to and including one hour and the total fees/costs are less than \$10.
 - There are no fees charged for an EMS patient-related record request when the record is requested directly by the patient or the patient's attorney or insurance company.
 - There are no fees charged for 911 call recording requests. Emergency Dispatch will provide the 911 call recording to the requesting party by email.

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- **Payment:** If allowed for any other payment to SMFR, the Custodian shall allow requesters of public records to pay any fee or deposit associated with the request with a credit card or via an electronic payment,

General

When practical, the copy, printout or photograph of the requested record will be made in the place where the record is kept, but if it is impractical to do so, the Custodian of Records or designee may allow arrangements to be made for the copy, printout or photograph to be made at other facilities. If other facilities are necessary, the cost of providing requested records will be paid by the person making the request.

Any public record that is stored in a digital format will be provided in a digital format. A public record stored in a digital format that is searchable will be provided in searchable format and a public record stored in sortable format will be provided in sortable format. A public record that is in a searchable or sortable format shall not be produced if:

1. Producing the record in the requested format would violate the terms of any copyright or licensing agreement between the District and a third party;
2. Producing the record would result in the release of a third party's proprietary information; or
3. After making reasonable inquiries:
 - a. It is not technologically or practically feasible to permanently remove information that the custodian is required or allowed to withhold within the requested format;
 - b. It is not technically or practically feasible to provide a copy of the record in a searchable or sortable format; or
 - c. The Official Custodian would be required to purchase software or create additional programming or functionality in its existing software to remove the information required or allowed to be withheld.
4. A public record stored in digital format shall be provided in digital format by electronic mail, unless the size prevents email transmission, in which case it shall be transmitted by another method, as agreed on by the requesting individual and the Official Custodian.
5. Altering an existing digital public record, or excising fields of information that the Official Custodian is either required or permitted to withhold under this subsection, does not constitute the creation of a new public record.

In accordance with the Colorado Special Districts Records Management Manual, Section 7.235, formal requests for open records submitted in accordance with state law and supporting documentation relating to SMFR's response to or denial of the request will be maintained for 1 year + the current year after the request is answered.