



Arkansas Conservation District Directors Training Manual

Open Records

The Arkansas Freedom of Information Act (“FOIA”), Ark. Code Ann. §§ 25-19-101 to 25-19-109, was enacted in 1967 and has been amended many times since. Conservation Districts are subject to the requirements of the act.

The Freedom of Information Act has two major sections that affect how Conservation Districts carry out their work:

- **Open records.** This part of FOIA addresses who may request written records, what records they may request, timeframes for your response, etc.
- **Open meetings.** This part of FOIA addresses how you conduct meetings, who should receive notice, timeframes for notice, etc.

Records

What constitutes a record? FOIA applies to “writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium.”

What records are subject to FOIA? Records of a “public official or employee” and a “governmental agency” are covered by the FOIA. All records “required by law to be kept or otherwise kept, and which constitute a record of the performance or lack of performance of official functions” are public records.

District records, whether physically present at the district office or in a board member’s home, are subject to the FOIA. Examples of district records subject to FOIA include incoming and outgoing email and correspondence, meeting agendas and minutes, and district financial records. FOIA applies only to existing records and a Conservation District “is not required to compile information or create a record” in response to a request.

Your first rule of thumb when considering an FOIA request is to call your LRS or ANRC with any questions you may have and to make contact immediately.

Should all public records be disclosed?

Records are subject to disclosure unless excluded by law. Some district records are covered by the statutory nutrient management exemptions. Other exclusions apply to personnel file material. Determining what is exempt and what is not becomes very tricky so check with your LRS before disclosing information through an FOIA request. **Always check with your LRS or the ANRC when ever you receive a FOIA request.**

Is my personal email subject to FOIA? Yes. Because email received and sent from your office computer may demonstrate a record of performance or lack of performance, it is subject to disclosure. Even cell phone records of conversations held on district-owned phones are subject to disclosure.

Requests

Who can request records? “Any citizen of the State of Arkansas” may make a request. In addition to Arkansas residents, the term “citizen” includes corporations doing business in the state, partnerships, and other groups doing business in the state. **If you receive a request from an out-of-state address or telephone number and are concerned about filling the request, call your LRS or ANRC.**

What if I don’t understand what is being requested? Attorney General opinions state that a request must be sufficiently specific to enable the custodian to locate the records with reasonable effort. If a request is unclear, a Conservation District is encouraged to

communicate with the requester to seek clarification. If a request is overly broad, you may deny it pending further clarification. Denials should be provided in writing.

Can a Conservation District specify how it receives a request? A FOIA request may be made in person, by telephone, by mail, by fax, by email or by other electronic means provided by the custodian. Requests by telephone or in person must be made during the district's regular business hours.

The district cannot require a written request. However, if an oral request is complicated or unclear, you may encourage the requester to put his request in writing. Although the requester is not required to comply, it could make filling the request easier for both of you.

What are my options upon receiving a request? A district should respond **IMMEDIATELY** to a FOIA request. After contacting your LRS, the district may take the following actions:

- 1) grant the request in full and release records,
- 2) grant the request in part and release some of the records or disclose records with exempt portions deleted,
- 3) deny the request entirely,
- 4) state that the records do not exist or that the records are not in the agency's possession, or
- 5) advise the requester within three working days that the search and compilation process should be completed by a certain date.

Can the requester specify a format? FOIA does not require an agency to maintain records in a certain medium or format. A district must only provide the record in the format requested if

(1) the requester asks for the records in a specific format (2) and the record is readily accessible in the requested format.

Can a Conservation District charge for records? Districts may charge fees that do not exceed the actual costs of reproducing and transmitting the record. Districts may charge for supplies, equipment, maintenance of equipment, and postage, but may not include employee time spent fulfilling the request. An itemized breakdown of all charges must be provided to the requester. In 2007, the rate for copies assessed by the Arkansas Natural Resources Commission was \$.045 per page or 100 pages for \$4.50. If the request is voluminous and will likely exceed \$25.00, the district may require payment in advance.

The Conservation District may provide copies without charge or at a reduced fee if it determines the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest. However, be sure that all requesters are held to the same standard.

Who enforces FOIA? There is no state agency that enforces FOIA. Citizens or the Attorney General may bring civil suits to enforce FOIA. The court may fine violators up to \$100, award plaintiff attorney fees, and may mandate imprisonment for up to 30 days.

*Adapted for Conservation Districts from Fifth Edition (2006) of the **Open Government Guide**, published by The Reporters Guide To Freedom of the Press. The complete Guide, including all citations is available at <http://www.rcfp.org/ogg/index.php>*