

**MEMO REGARDING FREEDOM OF INFORMATION ACT
REQUEST FOR RECORDS
OF
PINE STRAWBERRY WATER IMPROVEMENT DISTRICT**

By law the Pine Strawberry Water Improvement District {the "District"} is required to maintain all of its records and documents. It is required to preserve, maintain and care for the Records. Records are defined as:

Those records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from the state or any political subdivision of the state *Arizona Revised Statutes §39-121.01* and all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein *Arizona Revised Statutes § 41-1350*.

Responding to Public records requests for District documents is a part of the operations of the District as a unit of local government. Everyone is entitled to examine the records of the District. You do not have to be a resident or property owner within the District. The law says that the records are open to inspection by any person at all times during office hours of the District.

To most easily allow access to the Public Records of the District, including Public Notices, Agendas, minutes and official board actions, bearing signatures where and when required, should be posted on the web site of the District. Initially it is not necessary to post internal memos or communications, or correspondence. Likewise as engineering reports and other documents become available they can also be posted to the District's website. Since the District is a relatively new public entity it should be easy to scan in the old records of the District and post them to the website. Then, as new ones are developed, such records can contemporaneously be made a part of the District's website. This will reduce the amount of time that the District personnel may have to spend responding to public records requests. If records are posted on the website they should be indexed so that people can easily find them, and in an unalterable form, not capable of being edited or altered by anyone.

If a person requires that a Record which is contained on the website be certified by a District official as a true and correct copy of that record, then that person should make a copy of the Record, present it to the District personnel at the District's office who can then compare it with the original of the record in order to certify it as a true and correct copy of the original Record.

Anytime a request is made for Public Records of the District a determination must be made if the request is for records to be used for personal purposes or for commercial purposes. The Records request and the charges for the Records are treated differently if it is a commercial or a personal Request. Please note that there are two request forms attached to this memo which may be used depending upon the nature of the request.

The person requesting the Records can request them in person or request that the copies of the Records be mailed to them. The District must respond promptly to a request. The District may request that person or persons requesting records pay the cost of copying such records and for the postage to mail them if requested. Copying costs in other communities appear to be about \$0.25 per page. If for any reason the District chooses to withhold records, it must, upon request furnish an index of the records or categories of the records withheld.

Any person wrongfully denied access to public records has a cause of action against the public officer and the public entity for damages resulting from the denial and they are entitled to recover their reasonable attorney's fees and costs in pursuit of the records.

Public Records Requests for Copies of Documents for Personal Use:

Any person requesting Public Records for personal use shall fill out the form attached hereto as Exhibit 1 and provide it to the designated personnel of the District. The District should have someone in the office during business hours that can receive and respond to such requests.

Any person requesting Public Records for personal use shall be promptly provided the Records requested, unless the same are privileged. **The District may not deny public records to any person on the basis of their race, creed, color, religion, national origin or political persuasion or political point of view.**

A reasonable copying fee may be charged for these records as set forth above. **No fee may be charged for the administrative fees or personnel costs incurred by the District in satisfying such a request.**

No fee shall be charged for any public records to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which is to be presented to the United States or a bureau or department thereof.

Public Records Request for Copies of Documents for Commercial Use:

A person requesting District Records for commercial use must apply to the District on the form set forth as Exhibit 2. The District may charge for these records a fee based upon the following:

1. A portion of the cost to the District for obtaining these records.
2. A reasonable fee for the cost of time, materials, equipment and personnel used in producing the reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body.
4. A charge per page for each copy provided.

The amount of this fee will have to be determined by the Board.

If the District determines that the use set forth in the request for the records is a misuse of public records or an abuse of the right to receive public records, the District may apply to the Governor requesting that the Governor by executive order prohibit the furnishing of the copies for such commercial purposes. If such application is made, there is a legal process which has to be timely followed by both the District and the Governor to make the determination as to the eligibility of the records for release.

If a person uses a public record for commercial purposes which was improperly or incorrectly obtained, such person is liable in a civil penalty for three times the amount of the cost of the reproduction, plus attorney's fees and costs.

CONCLUSION

The provision of Public Records is a public service of the District which must be performed in a reasonable and prompt manner whenever a request is received.

ARS §39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition

A. When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:

1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body.

B. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the governor requesting that the governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.

C. A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records



EXHIBIT 2

Public Records Request

For Commercial Use

CAUTION: Arizona Revised Statutes §39-121.03 (C) provides:

A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for **damages in the amount of three times the amount which would have been charged** for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of **three times the actual damages** if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

A commercial purpose is defined by Arizona Law as the use of a public record for the purpose of:

1. sale or resale; or
2. producing a document containing all or part of the copy, printout, or photograph for sale; or
3. obtaining of names and addresses from such public records for the purpose of solicitation; or
4. for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public records.

Request is hereby made to (check one): ☐ inspect or ☐ reproduce

The following public record(s): (indicate document name, page numbers, address, and permit number where applicable. Attach 8.5" x 11" sheet if needed.)

Pursuant to *ARS §39-121.03*, the record(s) are requested for the following commercial use(s):

I agree to pay the sum of \$0.25 per page for each 8.5 inch by 11 inch copy or reproduction and the actual cost of the reproduction or copying of any larger size documents. I further agree to pay to the Pine Strawberry Water Improvement District the sum of \$20.00 per hour for personnel time to fill my request plus all other reasonable costs incurred by the District in filling my request.

I declare that I have read *ARS §39-121.03* which is printed on the next page of this form and understand the contents therein, and agree to abide by such statute.

I certify that all information provided is true and correct. I also agree that the public records will not be transmitted or resold to any other person or entity without specific authorization from the Pine Strawberry Water Improvement District. I agree to delete all data acquired via this request from my databases and all other electronic media forms upon completion of the purpose or use for which this request is made. I agree not to hold the Pine Strawberry Water Improvement District liable for any inaccurate or incomplete information I may receive.

Signature of Applicant

Date

Applicant Contact Information:

Name: _____

Address: _____

Phone: _____

Email: _____

ARS §39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition

A. When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:

1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body.

B. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the governor requesting that the governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.

C. A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records