

RESOLUTION NO. 1421

**RESOLUTION OF THE
MESA CONSOLIDATED WATER DISTRICT BOARD OF DIRECTORS
AMENDING THE POLICY FOR PUBLIC RECORDS
PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT
SUPERSEDING RESOLUTION NO. 1305**

WHEREAS, the Mesa Consolidated Water District (Mesa Water) is a county water district organized and operating according to California Law; and

WHEREAS, Mesa Water has the authority to adopt, pursuant to Government Code Section 6253.4, various regulations stating the procedures to be followed when making its records available in accordance with the California Public Records Act, commencing with Government Code Section 6250, *et. seq.*; and

WHEREAS, the Legislature has enacted substantial changes to the California Public Records Act since Mesa Water's adoption of its previous guidelines; and

WHEREAS, Mesa Water's Board of Directors considers it appropriate to adopt an updated, comprehensive policy regarding access to Mesa Water's public records and to specify procedures for obtaining access to Mesa Water's public records.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MESA CONSOLIDATED WATER DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Pursuant to Government Code Section 6250, *et. seq.*, Mesa Water's Public Records Policy is amended to read as shown in Appendix A, attached hereto and made a part hereof by this reference.

Section 2. The amendment to the Mesa Water's Public Records Policy shall become effective immediately.

Section 3. The Board hereby supersedes Resolution No. 1305 regarding access to public records adopted thereby effective upon the adoption of this Resolution and the revised Public Records Policy.

ADOPTED, SIGNED, and APPROVED this 28th day of August 2012 by a roll call vote.

AYES: DIRECTORS: Ohlig-Hall, Atkinson, Dewane, Fisler, Bockmiller
NOES: DIRECTORS:
ABSENT: DIRECTORS:
ABSTAIN: DIRECTORS:



Coleen L. Monteleone
District Secretary



Fred R. Bockmiller, Jr., P.E.
President, Board of Directors

RESOLUTION NO. 1421

APPENDIX A

RESOLUTION OF THE MESA CONSOLIDATED WATER DISTRICT BOARD OF DIRECTORS AMENDING THE POLICY FOR PUBLIC RECORDS PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT SUPERSEDING RESOLUTION NO. 1305

1.0 PUBLIC RECORDS ACCESS POLICY

1.1 Intention

The California Legislature has declared that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this State. The California Public Records Act, Government Code Section 6250, *et seq.* ("Act" or Public Records Act"), generally requires public records to be available to the public upon request. Mesa Consolidated Water District (Mesa Water) has established the following policy and guidelines to ensure that members of the public fully understand and are afforded an opportunity to use their right to inspect and obtain copies of Public Records.

1.2 Provision of Policy

A copy of this Policy will be provided free of charge upon request. This Policy will also be posted on Mesa Water's internet website.

1.3 Authority

This Policy has been adopted by the Board pursuant to the provisions of California Government Code Section 6253.4(a). This Policy is subject to future amendment and interpretation as set out in Section 5.0.

2.0 DEFINITIONS

Unless the context clearly otherwise requires, the terms defined in this Section shall, for all purposes of this Policy, have the meanings herein specified.

- a. "Act" or "Public Records Act" means the California Public Records Act, being California Government Code Section 6250 *et seq.*, as currently in effect and as such may be amended from time to time.
- b. "Board" means the Board of Directors of the Mesa Consolidated Water District.
- c. "Business Day" means a day which is not a Saturday or Sunday or a day on which Mesa Water is not open to conduct business, such as State and federal holidays.

- d. "District Secretary" means Mesa Water's duly appointed and serving Secretary, or, in the absence of the Secretary, an Assistant Secretary.
- e. "Electronic Records" means a record, document or writing contained, transcribed or held in electronic format, such as computer records, listings, electronic mail (e-mail) and similar.
- f. "Member of the public" means any Person, except a member, agent, officer, or employee of a Federal, State, or local agency acting within the scope of his or her membership, agency, office, or employment. Notwithstanding this definition, nothing in this Policy shall be construed to limit the ability of Mesa Water's elected or appointed members or officers from accessing the Public Records of Mesa Water on the same basis as any other Person, nor shall this definition limit the ability of elected or appointed members or officers to access Public Records permitted by law in the administration of their duties.
- g. "Mesa Water" means the Mesa Consolidated Water District or any employee authorized to act on its behalf.
- h. "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
- i. "Policy" means this Public Records Policy as adopted and amended or interpreted from time to time.
- j. "Public Records" includes any Writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by Mesa Water regardless of physical form or characteristics. For purposes of this Policy, Public Records do not include those Writings or documents that are exempt from disclosure, as described in Section 4.0 or otherwise exempt from disclosure, or which are not considered to be Public Records pursuant to the provisions of State law.
- k. "Request" means a request, submitted in writing, to Mesa Water, as set out in this Policy, to request inspection or copying of one or more Public Records held by Mesa Water.
- l. "State" means the State of California.
- m. "Writing" means any handwriting, typewriting, printing, photo stating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine genera is for convenience only and shall be deemed to include the neuter, masculine or feminine

gender, as appropriate. Headings of sections herein are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

All references herein to "Sections" and other subdivisions are to the corresponding Sections or subdivisions of this Policy; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Policy as a whole and not to any particular Section or subdivision hereof.

3.0 PROCEDURES FOR ACCESSING PUBLIC RECORDS

3.1 When Public Records May Be Inspected

The Public Records of Mesa Water shall be open to inspection, except as otherwise provided by this Policy and the Public Records Act, during Mesa Water's regular business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Holidays), and every Person has the right to inspect such Public Records. Any reasonably segregable portion of a Public Record will be made available for inspection by any Person requesting the Public Record after the deletion or redaction of the portions thereof that are otherwise exempted from disclosure.

The inspection of Public Records is subject to a rule of reason as to time and duration and must be consistent with the efficient functioning of Mesa Water's offices. Mesa Water requests that any Person who wishes to inspect Public Records telephone Mesa Water's business office and schedule an appointment with the District Secretary to inspect the Public Records. It is Mesa Water's policy that Public Records not exempt from disclosure by State law will be open for public inspection with the least possible delay and expense to the requesting Person.

The inspection of such Public Records shall take place at Mesa Water's business office or at such location designated by Mesa Water, and Public Records so produced shall not be removed from Mesa Water's business office premises without the express prior written approval of the District Secretary.

3.2 Procedures for Obtaining Copies of Public Records

3.2.1 Submission of Requests

Requests for copies of Public Records shall be submitted orally or in writing to the District Secretary, which may include submission by electronic means. Oral requests, if made, may be reduced to writing by Mesa Water staff to verify that it is responding to the appropriate request and providing documents actually requested. Written requests shall, unless waived by the District Secretary, at the District Secretary's discretion, include all of the following information:

- a. A statement that the Person is requesting information under the Public Records Act;

- b. A clear and specific description of the Public Record(s) being requested. If possible, the requestor should identify date(s), subject(s), title(s), or author(s) of the Public Record(s) requested; and
- c. The requestor's contact information, including name, address, telephone number, and, if available, a fax number or e-mail address. To the extent such information is not provided, the request should include an alternative means by which the requestor may be contacted when the documents are available for inspection or copying. Such information may nevertheless be required, along with proper identification, if the requestor is paying by either credit card or check.

Such Requests must be submitted in person, by United States mail, by facsimile transmission or by electronic means to Mesa Water's business offices, to the attention of the District Secretary. Requests submitted by facsimile should be confirmed as to receipt by the requesting person. It is the responsibility of the requesting Person to confirm Mesa Water's receipt of such a facsimile transmission request.

Requests received after normal business hours by facsimile transmission shall be treated as being received by Mesa Water on the following business day. Mesa Water assumes no liability for facsimile transmissions which are not received or are not comprehensive as a result of transmission difficulties.

Requests for Public Records may be submitted electronically. Such Requests shall be directed to the District Secretary. The District Secretary may prescribe an electronic form for Requests for Public Records (electronic requests) and set forth such form on Mesa Water's website. Such forms may be used to screen spurious or automated e-mails which do not constitute legitimate Requests for Public Records.

The District Secretary shall have the authority to prescribe a standard form(s) for Public Records Requests and require the use thereof. The form(s) shall include a statement relating to Mesa Water's current copy costs. The requestor may be required to pay for copies of requested Public Records in advance.

The principal officer designated to receive Requests for Public Records and to reply and respond to such Requests is the District Secretary.

3.2.2 Assistance Identifying Public Records Sought

Whenever a Person is unable to make a clear and specific Request for one or more desired Public Record(s) as required by Section 3.2.1, Mesa Water shall, to the extent reasonable under the circumstances:

- a. Assist the Person to identify those Public Records that are responsive to the Request or to the purpose of the Request, if provided;

- b. Describe the information technology and physical location in which the Public Record exists; and
- c. Provide suggestions for overcoming any practical basis for denying access to the Public Record(s) sought.

Mesa Water's responsibilities under this Section will be deemed satisfied if Mesa Water is unable to identify the Public Record(s) sought after making a reasonable effort to elicit additional clarifying information from the Person making the Request.

The District Secretary or an agent acting for the District Secretary (which may include another Mesa Water employee so authorized by the District Secretary, or Mesa Water legal counsel) may contact a person who has presented a Request in order to clarify the nature of the Request or the Public Records being requested. In the event that a Request is modified by the person making the Request as result of such contact(s) as set out in this Section 3.2.2, the nature of such modification(s) or refined Request shall be documented by the District Secretary, such documentation will typically be in the form of a letter or e-mail to the person making such Request.

3.2.3 Time for Mesa Water's Initial Response

Upon receipt of a properly completed and submitted Request for copies of Public Records, the District Secretary shall within 10 days determine whether the Request, in whole or in part, seeks copies of Public Records in Mesa Water's possession that are disclosable under the Public Records Act, and shall promptly notify the Person making the Request of Mesa Water's determination, reasons for such a determination, and an approximate date and time when such requested Public Records that may be disclosed by Mesa Water will be made available. Responses to Requests shall be in writing. Such responses may be made/furnished by U.S. Mail, facsimile, e-mail or other means as the District Secretary shall determine.

In unusual circumstances, the 10-day time limit may be extended up to 14 days by written notice by Mesa Water to the requestor, setting forth the reason for the time extension. Unusual circumstances include:

- a. The need to search for and collect the requested records from offsite facilities or other establishments that are separate from the Mesa Water business office;
- b. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single Request;
- c. The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination

of the Request or among two or more components of the agency having substantial subject matter interest therein;

- d. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

3.2.4 Records in Electronic Format

Unless otherwise prohibited by law, Mesa Water shall, upon request, make available any Public Record in electronic format, the disclosure of which is not exempt under the Public Records Act, in any electronic format in which Mesa Water holds the information or in the format requested if the requested format is one that has been used by Mesa Water to create copies for its own use or for provision to other public agencies.

Mesa Water is not required to reconstruct a record in electronic format if it no longer has the record available in electronic format. Mesa Water is also not required to create or generate a document or Writing that does not exist at the time a Request is made (for example, a listing, schedule or compilation that Mesa Water does not have, possess or use in its activities or business). If an electronic record is not requested, but the record is available electronically, Mesa Water may inform the requestor that the record is available in that format. Mesa Water shall not be required to release an electronic record in the electronic form in which it is held by Mesa Water if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

3.2.5 Fees for Copies of Records

A Request for a copy of an identifiable Public Record or information produced will cover the direct costs of duplication, which will be based upon the current cost per standard reproduced page. Mesa Water may, from time to time, prescribe and update its standard costs imposed for copying or electronic generation of requested Public Records. Such costs shall be made available to members of the public and may be posted on Mesa Water's internet website.

Mesa Water may commence work on any document copying or reproduction of any requested Public Record prior to the costs or cost estimate being deposited with, and received by, Mesa Water. Upon completion of the copying process, the Person making the Request shall be notified that the copies are available for delivery. Unless otherwise agreed to by Mesa Water, delivery shall be made at Mesa Water's business office. Upon delivery of the requested Public Records, the Person making the request shall pay the amount shown for all copies.

In some cases Mesa Water may estimate the copy costs for requested Public Records. The District Secretary may elect to waive such costs in certain cases, at the sole discretion of District Secretary.

3.2.5.1 Fees for Records in Electronic Format

The requestor will be responsible for the direct cost of producing a copy of a Public Record in electronic format, and will also bear the costs to construct a Public Record and the programming and computer services necessary if Mesa Water is required either to:

- a. Produce a copy of an electronic record and the Public Record is one that is produced only at otherwise regularly scheduled intervals, or
- b. Perform data compilation, extraction, or programming to produce the Public Record.

3.2.6 Mesa Water's Response to Requests

In responding to Public Record Requests, Mesa Water will generally advise the Person submitting the Request, by telephone, U.S. Mail or e-mail, as appropriate, of:

- a. The location, date, and time at which the requested Public Records may be inspected;
- b. The cost of providing copies, if copies of Public Records are requested;
- c. Which of the records requested are not subject to disclosure as Public Records pursuant to the applicable provisions of the Public Records Act.

3.2.7 Assistance in Responding to Requests

Mesa Water's officers and employees are authorized to assist the District Secretary in compliance with the provisions of the Act and the provisions of this Policy.

4.0 RECORDS NOT OPEN TO PUBLIC INSPECTION

In balancing the public's right to access Public Records with the recognized individual right of privacy, statutory limitations and requirements, and the need for Mesa Water to be able to competently perform its duties, the Legislature has established certain categories of records, which may be exempt from public disclosure or inspection.

A complete list of statutory exemptions can be found in the Act. Documents, information, writings or records not subject to disclosure are not "Public Records" within the meaning of this Policy. Public Records exempt from disclosure that pertain to Mesa Water include, but are not limited to, the following:

- a. Preliminary drafts, notes, or inter-agency or intra-agency memoranda which are not retained by Mesa Water in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

- b. Records pertaining to pending litigation to which Mesa Water is a party, or to claims made to Mesa Water pursuant to Government Code Section 810, *et. seq.*, until such litigation or claim has been finally adjudicated or otherwise settled;
- c. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
- d. Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person;
- e. Contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by Mesa Water relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. The laws concerning the requirements for exercise of the power of eminent domain, however, shall not be affected by this subsection;
- f. Documents prepared by or for Mesa Water that assess its vulnerability to terrorist attack or other criminal acts intended to disrupt Mesa Water's operations and that is for distribution or consideration in a closed session;
- g. Records of which the disclosure is exempt or prohibited pursuant to provisions of federal or State law, including, but not limited to, provisions of the Evidence Code relating to privilege;
- h. Writings covered by the attorney-client privilege pursuant to Government Code Sections 6253(k) and/or 6254.25 or otherwise under State or federal laws concerning attorney-client privilege.
- i. Memoranda submitted to Mesa Water's Board of Directors by its legal counsel pursuant to Government Code Sections 11126(e) or 54956.9, until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled;
- j. Computer software, which includes computer mapping systems, computer programs, and computer graphic systems, developed by Mesa Water shall be subject to the provisions of Government Code Section 6254.9, or any successor section thereto, providing that such software is not a Public Record under the Public Records Act and that Mesa Water may sell, lease, or license the software for commercial or noncommercial use;
- k. As provided by Government Code Section 6254.16, Mesa Water is prohibited from disclosing the name, credit history, utility usage data, home address, or telephone number of any of Mesa Water's customers, except that such information shall be provided upon request: (1) to an agent or authorized family member of the Person to whom the information pertains; (2) to an officer or employee of another governmental agency when necessary for the performance of its official duties; (3) upon court order

or the request of a law enforcement agency relative to an ongoing investigation; (4) upon determination by Mesa Water that the utility customer who is the subject of the Request has used utility services in a manner inconsistent with applicable local utility usage policies; (5) upon determination by Mesa Water that the utility customer who is the subject of the Request is an elected or appointed official with authority to determine Mesa Water's utility usage policies, provided that the home address of an appointed official shall not be disclosed without his or her consent; or (6) upon determination by Mesa Water that the public interest in disclosure of the information outweighs the public interest in nondisclosure.

- l. Documents which fall within the exemption of the deliberate process protection as set out in Times Mirror Co. v Superior Court (1991) 53 Cal.3d 1325, to the extent supported by current State law.
- m. Purely personal information contained in a correspondence, e-mail or in a Mesa Water computer which is unrelated to the conduct of Mesa Water's business (i.e. a shopping list received from home, phone message from an employee or director's spouse about picking up the children, or an e-mail from a friend which is are totally void of reference to governmental activities).
- n. Additional information and documentation held by public agencies which are not Public Records or not subject to disclosure pursuant to the Act are also set forth in Government Code Section 6275.

Mesa Water also possesses the discretion to claim an exemption from public disclosure records, which do not qualify for a specific exemption under the Act, but for which Mesa Water may determine the public interest served by not making the record public clearly outweighs the public interest served by disclosure. Public Records subject to exemption may nevertheless be made available for inspection if waiving the exemption will serve the public interest, as determined by Mesa Water on a case-by-case basis. However, Mesa Water's determination to disclose a record, which may otherwise be exempt from disclosure, does not constitute a waiver with respect to any other records.

Notice – Under the provisions of the Act, Requests made or submitted to Mesa Water are generally themselves Public Records. Mesa Water may redact from such Request, which are themselves subject to a Request, information such as home addresses, e-mail addresses and phone numbers to the extent legally permissible, but persons submitting Requests should be aware that such Requests generally fall within the definition of a Public Record (Government Code Section 6252(e)).

5.0 AMENDMENTS AND INTERPRETATIONS OF POLICY

5.1 Amendments and Interpretations by the Board

This Policy is subject to amendment from time to time by action of the Board. The Board also reserves the right to provide interpretations of this Policy from time to time by action of the Board.

5.2 No Conflicts

It is the intention of Mesa Water that this Policy shall not conflict with the applicable provisions of the Act or State law. In the event of such a conflict, State law, if applicable, shall govern over the terms of this Policy. In such event, all efforts shall be made to harmonize the provisions and requirements of State law and this Policy.

5.3 Changes in State Law

State statutes or case law may, from time to time, provide for interpretations or amendments as to what shall constitute a Public Record subject to the provisions of the Act. Such amendments and interpretations shall be considered to be integrated into this Policy which such statute(s) or case decisions(s) shall become effective.

5.4 Interpretations by District Secretary

The District Secretary may, from time to time, issue written interpretations of this Policy to assist in complying with the requirements of the Act or Mesa Water's administration of this Policy where not in conflict with the Act.

5.5 Limitations Concerning Records and Information -- Internet Posting

Mesa Water is prohibited from posting the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual. It is a misdemeanor for any person to knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet, knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. (Government Code Section 6254.21).

6.0 DISPUTE OF MESA WATER'S RESPONSE TO PUBLIC RECORDS ACT REQUEST

Any Person may appeal a decision by Mesa Water, or the District Secretary, not to provide access or inspection to any information or document to the Board. The Board may consider such Request for access/inspection and may, in their complete discretion, grant such access or inspection, except where such records or documents must be kept confidential pursuant to State or federal law.

Additionally, under the Act, Government Code Section 6258, any Person may seek injunctive or declarative relief in any court of competent jurisdiction to enforce the right to inspect or to receive a copy of any information or document.