

SOUTH METRO FIRE RESCUE POLICIES & PROCEDURES



Policy & Procedure #: 2.6

Subject: Open Records Requests

Division: Executive

Effective Date: 03/06/12

Revision Date: 10/07/19

Accreditation: 1A.2

Scope: All personnel.

Policy/Procedure:

Authority & Responsible Areas

Most records retained by SMFR are considered public records and must be made available to the public when requested in as quick and efficient a manner as possible.

Public records are 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. 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 the Colorado Open Records Act. 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. See Collins, Cockrel, & Cole (2011) noted in the reference section for additional explanation.

Generally, architectural and engineering drawings reviewed by SMFR's Fire Marshal's Office for permitting purposes are considered open records unless protected by a Non-Disclosure Agreement (NDA) or other copyright laws. SMFR will make a reasonable attempt to check for any NDA's 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.

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By separate resolution of the SMFR Board of Directors, the Fire Chief's Executive Assistant has been designated as the Official Custodian of Records pursuant to the Colorado Open Records Act, C.R.S., 24-72-101, *et seq.* ("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 routine, incident-related records request to the Fire Marshal's Office, EMS Bureau, Communications Bureau and the MetCom/Technical Services Bureau. This includes:

- 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 Life Safety Bureau'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 and paper CAD reports shall be forwarded to MetCom for processing.

Submittal & Review of Requests

All records requests shall be documented in writing and as specific as possible in regards to the information that is being requested. This can be accomplished through the requesting party's written correspondence or an SMFR-provided form. For non-EMS or non-911 record requests, the Custodian of Records or designees can take a verbal request and document the information for the customer. Unless otherwise required by law, the requesting party does not need to state a reason for the records request.

EMS patient-related records requests shall be submitted in writing and the requesting party shall identify their affiliation with the patient, the incident date, any identifying

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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 spreadsheet for tracking purposes. The EMS Bureau maintains a secure database for EMS-related requests. Requests processed by the Fire Marshal's Office shall be entered in the spreadsheet located in the Fire Marshal's Office drive.

Requests for 911 call recordings and paper CAD reports shall be submitted in writing to MetCom, using MetCom's "Request for Recording" form, which will ask the requesting party or parties to provide the following information: identify their 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). The caller's name, telephone number and address, and any HIPAA protected health information should be deleted from the copy of the recording and paper CAD report before it is provided. Only the information pertaining to the case/incident number will be provided. No other information will be released to the requesting party. Completed recording request forms are maintained in MetCom's files. Verbal requests for call recordings will not be accepted.

Upon receiving a records request, the Custodian of Records or designees shall immediately review the request and the desired records to determine compliance with 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 business days of the request.
- 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

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information cannot be “uncovered” by the requesting party.

- 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.
- Pursuant to CORA, all records must be made available for inspection within three (3) working days of when the request was made, 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 request.

Copies & Fees

- Standard Allowable Fees
 - A copy fee of \$0.25 per standard page will be charged. 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. 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 than a printed standard page.
 - When processing times take more than one hour, a reasonable research and retrieval fee of \$33.58 per hour, not including the first hour, will also be charged.
 - Any cost for transmitting the requested records will be charged at the actual cost of such delivery.
 - If data must be manipulated in order to generate a record in a form not otherwise used by the District, such data manipulation will be assessed at the actual costs to the District; however, the District is in no way obligated to generate a record that is not otherwise kept, made or maintained by the District.
- 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.

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- There are no fees charged for an EMS patient-related record request when the record is requested directly by the patient.
- There are no fees charged for 911 call recording requests. MetCom will provide the 911 call recording to the requesting party by email.

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.

References:

Collins, Cockrel, & Cole. (2011, August 9). *Colorado Open Records Act & HIPAA: Responding to requests for authority records, patient care reports, and incident reports*