

CHAPTER: 200

Public/Public Access

DEPARTMENT ORDER:

201 – Legal Services – Records Release

**OFFICE OF PRIMARY
RESPONSIBILITY:**

LS

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ACCESS

Contains Restricted Section(s)

**Arizona
Department
of
Corrections
Rehabilitation
and Reentry**



Department Order Manual

A handwritten signature in black ink, appearing to read "David Shinn", is written over a horizontal line.

David Shinn, Director

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PURPOSE

This Department Order establishes guidelines for promptly processing requests for Department records pursuant to state and federal law and Department policies and procedures.

Procedures for a coordinated response to news media outlets' record request through the Media Relations Office are outlined in Department Order #207, Media Relations. Procedures for providing records to news media, the Governor's Office, and members of the Legislature during significant events may also be found in Department Order #207, Media Relations. Requests for information related to inmates or offenders should be directed to Constituent Services as outlined in Department Order #124, Constituent Services.

APPLICABILITY

This Department Order is applicable whenever any staff member, including private prison employees, acting in an official capacity, receives a request for records maintained by the Department.

RESPONSIBILITY

The Legal Services, Public Access Unit, under the supervision of the General Counsel or designee, shall have the day to day responsibility of responding to requests for Department records. The Legal Services, Public Access Unit shall provide responses to request for:

- Records maintained by the Department pertaining to incarcerated individual inmates and for records pertaining to offenders under Community Supervision.
- Records pertaining to inmate programs, including Counseling and Treatment, Religious and Volunteer Services, and records concerning inmate classification, and inmate time computations and releases.
- Financial, Procurement and budgetary records, requests pertaining to construction matters and pertaining to prison population and population projections; aggregate records concerning personnel, training, and staff development; and aggregate records concerning inmates and previous inmates.

Should any questions arise regarding the nature of the public records request, including but not limited to, whether the request is to be handled by Legal Services or instead forwarded to the Media Relations Office, the employee receiving the request shall contact the General Counsel or designee for clarification.

Requests regarding Inmate Medical and Mental Health Records should be directed to the Department Medical Program Administrator or designee.

PROCEDURES

1.0 PUBLIC RECORDS

- 1.1 As a public agency, all Department records are public and are subject to disclosure, unless those records are deemed confidential by state or federal law, Department policies or procedures or are otherwise exempt from disclosure. For a list of confidential records by statute, refer to the Arizona Attorney General's website located at <https://www.azag.gov/>.
- 1.2 The Department may cease processing a public record request when the request poses an unreasonable administrative burden on the Department given:

- 1.2.1 The resources and time it will take to locate, compile, and redact any responsive records;
 - 1.2.2 The volume of records requested, and
 - 1.2.3 The extent to which satisfying the request will disrupt or otherwise substantially interfere with the Department's ability to perform its statutorily mandated core functions. In such case, the employee assigned to process the request shall obtain approval through the chain of command from Legal Services prior to taking any such action.
- 1.3 Department records that fall into one or more of the following categories are considered confidential and requests shall be received and processed by the Public Access Unit under the supervision of Legal Services.
- 1.3.1 Records that, if disclosed, would create an invasion of privacy, for example, birth dates, social security numbers, employee identification numbers, home addresses and personal telephone numbers of all employees.
 - 1.3.2 Records that are classified as confidential in the Arizona Administrative Code. Arizona Administrative Code (A.A.C.) R2-5A-105 specifies who may have access to official personnel files, and under what circumstances.
 - 1.3.3 Records that, if released, in the opinion of the Director, or designee, could jeopardize legitimate penological interests, for example, access to Inmate Protective Custody Records.
- 1.4 In some instances, portions of a requested record may be deemed confidential. In such cases, the record may be released when the confidential portion has been redacted, if such redactions can reasonably be accommodated as outlined in 1.2 of this section.
- 1.5 In circumstances where the confidentiality of a requested record is unclear, the employee assigned to process the request shall obtain clarification through his/her chain of command prior to taking any action.
- 1.6 Only the Director or designee may approve the release of confidential information.

2.0 GENERAL PROVISIONS

- 2.1 The release of non-confidential Department records, in whole or in part, shall be limited to those records or portions of records that are specifically requested.
- 2.2 In some cases, requested public records exist in a format other than the one specifically requested. In such cases, the requester shall be informed that the requested format is not available. If the requester chooses, the records may be provided in the format used by the Department at a cost as outlined in this Department Order.
 - 2.2.1 If any responsive records are unavailable to the Department due to technology modifications, but can reasonably be converted to an available format, if the requester chooses, the records may be converted into an available format at the cost of the conversion and borne by the requester.

- 2.3 Requesters shall cooperate with Public Access staff to ensure that the records requested are specific and identifiable public documents pursuant to Arizona Revised Statute (A.R.S.) §39-121, §39-121.01, and §39-121.03. Requests for records that do not currently exist with the requested information or which may require the production of or creation of new reports may not be accommodated.

3.0 RESPONDING TO REQUESTS FOR PUBLIC RECORDS

- 3.1 All requests for public records must be submitted in writing.
 - 3.1.1 Requests shall be made via any of the following methods:
 - 3.1.1.1 The online public records request portal available on the Department’s public website;
 - 3.1.1.2 United States mail;
 - 3.1.1.3 Facsimile; or
 - 3.1.1.4 In person.
 - 3.1.2 Requests submitted via email will not be processed and the requester should be redirected to provide the request via one of the acceptable methods outlined above.
 - 3.1.3 Legal Services, Public Access staff shall enter those requests received via United States mail or facsimile into the online database for tracking and processing.
 - 3.1.4 Requesters appearing in person at the Legal Services, Public Access Unit to submit their request will be directed to submit their request online, in which case the requester may choose to use the kiosk located in the Legal Services, Public Access Unit (public room) to submit their request.
 - 3.1.5 Once requests are received and entered in the Department tracking database, requesters shall receive an acknowledgment that the request was received and is being reviewed.
- 3.2 The General Counsel or designee may deny a request if the records are unavailable and/or excessive staff time would be required to research the matter and/or compile the records, or the requester refuses to pay for the records as required. Such denial shall be approved by the Director or designee.
- 3.3 When appropriate, the requesting individual shall be referred to public information available, at no charge, on the Department’s public website.

4.0 REQUESTS FOR NON-COMMERCIAL PURPOSES

- 4.1 A person requesting copies, printouts or photographs of public records for a non-commercial purpose may be charged a fee for copies or scans of public records, and if appropriate, record conversations as outlined in 2.2.1 and postage costs, but not for the research. The supervisor or staff who worked on the request shall determine the number of pages copied or scanned, calculate the charges, and add the information to the Department Records Invoice, Form 201-1.

4.2 When requested pursuant to A.R.S. §39-121.01[D], physical copies will be charged at \$0.50 per page and uploaded digital copies will be charged at \$.10 per page unless other charges apply pursuant to other statutory and/or Department guidelines are listed on the Public Records Standard Charge List. Video and/or audio files will be charged based on the length of the media. Responsive records may be provided on compact disc (CD), digital video disc (DVD), or other media storage for a fee of \$15.00 each.

4.2.1 In the event other charges apply, staff shall confirm in writing to the person/entity requesting copies the amount that will be charged and obtain consent to complete copying from the person/entity requesting the copies.

4.3 If necessary, postage shall be calculated at the current rate and added to the total cost of the request.

4.4 Assigned staff shall determine if the records are available, not available, or while available require processing for production.

5.0 REQUEST FOR COMMERCIAL PURPOSES

5.1 Requests for public records that are to be used for a commercial purpose, as defined in A.R.S. §39-121.03, shall be processed in accordance with statute. The requester shall provide a statement describing the commercial purpose for which the records will be used. The charge for public records provided for a commercial purpose shall consist of the following:

5.1.1 A portion of the cost to the Department for obtaining the original or copies of the records;

5.1.2 A reasonable fee for the cost of time, materials, equipment and personnel associated with producing the records; and

5.1.3 The value of the reproduction on the commercial market as best determined by the Department.

5.2 When responsive records have been identified, the staff member processing the request shall calculate the total cost for the records, complete the Department Records Invoice form and notify the requester in writing of the total costs. The fee schedule is set forth in the Public Records Standard Charge List located on the form.

6.0 THIRD PARTY NOT SUBJECT TO COSTS

6.1 Agencies/individuals requesting copies shall be charged the standard rates outlined on the Department Records Invoice form. There shall be no charge for copies provided to:

6.1.1 The general public for claims against the United States, pursuant to A.R.S. §39-122.

6.1.2 State and/or Federal Correctional agencies.

6.1.3 Immigration and Customs Enforcement Agency.

6.1.4 Attorney General's Office in its capacity as a legal representative of the Department.

6.1.5 Any criminal justice agency engaged in prosecution or defense of a Department inmate pursuant to A.R.S. §31-227.

- 6.1.6 Claims for a pension allotment, allowance, compensation, insurance or other benefit that are to be presented to the United States or a Bureau or Department thereof.
- 6.1.7 A victim of a criminal offense for the crime at issue in accordance with A.R.S. §39-127. The victim may be provided one copy of the Department's Criminal Police Report at no charge.

7.0 SUBPOENAS

- 7.1 For Department records requested by a subpoena pursuant to A.R.S. §12-351, the requester shall be charged \$0.50 per page copied, uploaded digital copies will be charged at \$.10 per page, and \$25.00 per hour for each staff member who worked on the assignment unless other charges apply pursuant to other statutory and/or Department guidelines are listed on the Public Records Standard Charge List. Video and/or audio files will be charged based on the length of the media. Responsive records may be provided on CD, DVD, or other media storage device for a fee of \$15.00 each.
 - 7.1.1 The supervisor or staff member who worked on the request shall determine the number of hours staff worked to complete the request, calculate the charges and provide the total in the Department Records Invoice form to the requester.
- 7.2 Costs for responsive records shall be paid in advance unless a supervisor authorizes payment on receipt of copies.
- 7.3 A.R.S. §38-413 outlines legal action that may be taken against an employee who overcharges for copying costs.

8.0 INVOICING AND PAYMENT

- 8.1 When responsive records have been identified, the staff member processing the request shall calculate the total cost for the records, complete the Department Records Invoice form and notify the requester in writing of the total costs. The fee schedule is set forth in the Public Records Standard Charge List located on the form.
- 8.2 Payment for records may be made via the following methods:
 - 8.2.1 Visa or MasterCard online only at <https://adcpay.az.gov>;
 - 8.2.2 Cash; or
 - 8.2.3 Checks rendered in the form of personal, money order, or cashier.

9.0 METHODS OF RECORDS RELEASE

- 9.1 Requesters may choose the following record release medium:
 - 9.1.1 In-person viewing in the Legal Services, Public Access Unit at no charge;
 - 9.1.2 Hard/paper copies;
 - 9.1.3 CD; or

9.1.4 Uploaded into the online public records request portal. Uploaded records will only be available for 30 calendar days from the upload date and will promptly be removed thereafter.

9.2 Hard/paper copies and CDs can be picked up in person or mailed to the requester. Mailing shall be charged to the requester at the rate specified in this Department Order.

10.0 PROHIBITIONS – In connection with processing public records requests, Department employees shall not:

10.1 Release confidential information.

10.2 Offer personal opinions or interpretations concerning the possible guilt or innocence of a suspect or the credibility of a witness.

10.3 Identify crime victims and injured or deceased individuals until the next of kin has been notified.

10.4 Make comments or express opinions on governmental election issues while on duty, in uniform, at public expense or as a representative of the Department.

10.5 Honor requests for records that require an excessive expenditure of taxpayer funds and/or staff resources. The Department is not required to create documents that do not already exist.

10.6 Offer or give any legal advice, including but not limited to, advice pertaining to any Department records, record retention, record processing, and or methods of requesting public Department records.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms for the following:

- Certified Document
- Confidential Record
- Media
- Public Record

FORMS LIST

201-1, Department Records Invoice

AUTHORITY

A.A.C. R2-5A-105, Personnel Records

A.R.S. §11-593, Reporting of Certain Death, Failure to Report; Violation; Classification

A.R.S. §12-351, Costs of Compliance with Subpoena for Production of Documentary Evidence

A.R.S. §31-221, Master Record File; Information from Other Agencies; Confidentiality of File

A.R.S. §38-413, Charging Excessive Fees

A.R.S. § 39-121, Inspection of Public Records

A.R.S. §39-121.01, Copies; Printouts or Photographs of Public Records

A.R.S. §39-121.03, Request for Copies

A.R.S. §39-122, Free Searches for Copies of Public Records to be used in Claims against the United States
A.R.S. §41-151.15, Preservation of Public Records
A.R.S. §41-151.18, Definition of Records
A.R.S. §44-7601, Discarding and Disposing of Records Containing Personal Identifying Information; Civil Penalty; Enforcement; Definition