

Alaska Industrial Development and Export Authority



July 2012

**PROCEDURES FOR
INSPECTION OF
RECORDS**

AIDEA Procedures for Inspection of Records

1. GENERAL

1.1 The Alaska Industrial Development and Export Authority (the “Authority”) is a public corporation of the State of Alaska, constituting a political subdivision within the Department of Commerce, Community and Economic Development, but with separate and independent legal existence. The Authority is subject to the Alaska Public Records Act, AS 40.25.100 – 40.25.295. The Authority is also subject to the regulations (2 AAC 96.100 – 2 AAC 96.900) the Alaska Department of Administration adopted to implement the Alaska Public Records Act to the extent that those regulations are consistent with these Procedures.

1.2 The Authority will respond to a request for inspection of public records in the possession of the Authority in accordance with these Procedures, the Alaska Public Records Act, and in accordance with those specific regulations on public records that apply to the Authority.

2. PUBLIC ACCESS TO RECORDS

2.1 Except for records and confidential information protected from disclosure by applicable law, a public record of the Authority is available for inspection and copying in the format in which the Authority maintains it. Upon request and upon payment of any applicable fee, the Authority will duplicate and provide copies of a public record that is not protected from disclosure under applicable law.

2.2 The Authority is not required to compile or summarize its public records or manipulate its data to create new records in response to a request for public records.

2.3 The Authority will not require a person making a request to provide a justification or explanation of need or intended use. The Authority, however, may inquire whether the person making the request is a party, or represents a party, involved in litigation with the State of Alaska

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or a public agency to which the requested record pertains. If so, the Authority may require the person making the request to seek the records in accordance with applicable court rules.

3. REQUESTS FOR PUBLIC RECORDS

3.1 A request to the Authority for a public record must be in writing. Upon receipt of an oral request, the Authority will inform the person making the request of the written request requirement. The Authority may provide the person making the request with a form that, when completed by the person, will constitute a written request for a public record.

3.2 Notwithstanding the preceding paragraph, the Authority may elect to treat an oral request for a public record as valid. The decision to grant or deny an oral request is within the sole discretion of the Authority. An oral request is deemed denied if not granted within 10 working days after the oral request is made to the Authority. The only remedy if an oral request is not treated as valid, or is not granted, is to make a written request in accordance with the preceding subsection 3.1.

3.3 Requests for records will be handled by the Authority's public records coordinator, who shall be appointed by the Executive Director. If an employee of the Authority other than the public records coordinator receives a request for records, the request will promptly be forwarded to the Authority's public records coordinator.

4. DESCRIPTION OF RECORDS SOUGHT

4.1 A person making a request must describe the public records sought in sufficient detail to enable the Authority to identify and locate the records. The public records coordinator will make reasonable efforts to assist in the identification and description of the records sought. When an electronic search may be required, the Authority may require the person making the request to

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provide search terms, identify how the terms are connected, provide any date ranges, and provide any other search criteria that are needed to provide the records.

4.2 If the public records coordinator determines that the description of the records sought is not sufficient to allow the Authority to identify the requested records, the Authority shall, no later than 20 working days after receipt of the request, notify the person making the request that the request cannot be processed until additional information is furnished.

4.3 Time limits set out in these Procedures do not begin to run until the Authority receives a sufficient description of the records being requested.

5. LOG OF REQUESTS

5.1 The public records coordinator will maintain a log of each written request for public records, except for requests for records that are prepared for routine distribution. The log will include the date the request was received, the date additional information (if required) was requested, and the date the Authority responded.

5.2 The log will be treated as a public record and available to the public as such.

6. TIME FOR RESPONSE TO REQUEST

6.1 The basic time period within which the Authority will respond to a request for public records is no later than 20 working days after the request is received. However, the time for the Authority to respond to a request may be extended as provided for in these Procedures or in applicable law.

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6.2 When a request seeks confidential information protected by AS 44.88.215(a), the time for the Authority to respond will be extended as described in Section 7 of these Procedures, CONFIDENTIALITY AND NON-DISCLOSURE.

6.3 The public records coordinator may extend the time for responding, for an additional period of up to 20 working days, by providing a notice to the person making the request within the basic 20 working day period. The notice will state the reason for the extension and the date by which the Authority expects to be able to furnish the records or to issue a determination that the records cannot be provided. The notice will include a statement that the extension is not invoked for purposes of delay.

6.4 The public records coordinator may extend the time for responding when the following circumstances exists:

6.4.1 There is a need to search for and collect the requested records from offices that are separate from the office responsible for maintaining the records or from multiple locations where electronic records are stored.

6.4.2 There is a need to search for, collect or examine a voluminous amount of records sought in a request.

6.4.3 There is a need for consultation with an officer or employee who is absent on leave or business.

6.4.4 The basic 20-day response period comes during a peak workload period.

6.4.5 There is a need to consult with legal counsel to ensure that protected interests of private or government persons or entities are not infringed.

6.4.6 The Authority provides a person who may have a legally protected interest in the nondisclosure of any information an opportunity to protect that interest.

6.5 For good cause, the public records coordinator may request an additional extension (beyond the basic 20-day period and the 20-day extension period) from the Executive Director of

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the Authority. The Executive Director will give the person making the request and the public records coordinator an opportunity to be heard on a request for an additional extension. The Executive Director will make a prompt decision after any hearing is held, or if no hearing is held, after it is determined a hearing is not necessary. The Executive Director may grant the additional extension in unusual circumstances and only for the minimum period the Executive Director determines to be required to complete the search for or copying of the public records without substantial impairment of the other Authority functions.

6.6 Any time elapsing between when a person making a request is sent notice that processing the request will generate chargeable fees and the date the person makes suitable arrangement for payment of the fees is excluded from the response time.

6.7 The time limits set out in this Section 6 do not apply if the Authority documents that person making the request agrees the requested records need not be provided until a specified date that is later than time limit of this section.

7. CONFIDENTIALITY AND NON-DISCLOSURE

7.1 AS 44.88.215 requires that certain information of the Authority be kept confidential in order to further the purposes of the Authority to promote, develop, and advance the general prosperity and economic welfare of the people of Alaska, to relieve problems of unemployment, and to create additional employment through various programs in the Authority.

Sec. 44.88.215. Confidentiality of Information. (a) In order to promote the purposes of AS 44.88, unless the records were a matter of public record before submittal to the authority, the following records, files, and information shall be kept confidential upon the request of the person supplying the information or upon the request of the project, bond, loan, or guarantee applicant or borrower:

- (1) income tax returns;

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(2) financial statements, profit-and-loss statements, and cash flow projections, except the information required by the authority to calculate debt service coverage on the loan;

(3) financial business plans;

(4) credit reports from consumer reporting agencies and other credit information obtained from banks, creditors, or other credit reporting entities;

(5) trade secrets;

(6) appraisals, except the name of the appraiser, the date of the appraisal, and the fair market value determined for the property appraised;

(7) market surveys and marketing strategy information; and

(8) any information required to be kept confidential by a federal law or regulation or by state law.

(b) Information compiled by the authority from information described in (a) of this section shall be kept confidential unless disclosure is authorized by the person supplying the information and by the project, bond, loan, or guarantee applicant or borrower.

(c) The information that is determined to be confidential under (a) or (b) of this section is not a public record under AS 40.25.110 – 40.25.220.

(d) Nothing in this section shall prevent a legislator from reviewing information otherwise confidential under this section if the legislator has a valid legislative purpose for reviewing the information and if the legislator agrees to maintain the confidentiality of the information.

7.2 The following provisions shall apply to the Authority regarding any request to inspect records containing information confidential under AS 44.88.215:

7.2.1 If a person requests to inspect information described in AS 44.88.215(a), upon receipt of a written request to inspect public records, the public records coordinator may send by hand delivery, mail, email, or fax, notice of the request to the person supplying the information or to the project, bond, loan or guarantee applicant or borrower. If the public records coordinator sends notice of the request to inspect public records, the basic 20-day period within which the Authority must respond to the request for information shall be extended to 40 working days after the date the Authority receives the request in order to provide the project, bond, loan or guarantee applicant or borrower time to review and

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request that the Authority keep confidential additional records, files and information identified in AS 44.88.215(a) not previously requested to be kept confidential. The Authority may furnish for public inspection any requested record, file or information identified in AS 44.88.215(a) that has not been requested to be kept confidential.

7.2.2 If a person requests to inspect information that the Authority has compiled from confidential information described in AS 44.88.215(a), the public records coordinator shall send to the person supplying the information and to the project, bond, loan or guarantee applicant or borrower, notice of the request and solicit authorization to disclose the information. The public records coordinator shall send a copy of this notice to the person requesting to inspect the information. As required under AS 44.88.215(b), only if the person supplying the information and the applicant or borrower authorize disclosure may the Authority furnish the requested records that the Authority compiled from confidential information described in AS 44.88.215(a). The basic 20-day period within which the Authority must respond to the request for information shall not commence until 20 working days after the person supplying the information and the applicant or borrower grant their authorizations.

7.3 Although particular records do not contain information that is confidential under AS 44.88.215, the Authority may withhold public records from disclosure if those records, or information contained in them, are protected from disclosure under the Alaska Public Records Act or any other applicable law, including applicable legal principles on privileged documents and communications.

7.4 If a record contains information that is protected from disclosure and the record also contains information that is not protected, the Authority will segregate the protected information and withhold it while providing the information that is not protected. The Authority may segregate the protected information from the remainder of the record in any feasible manner,

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including redacting the protected information or using electronic methods to extract protected information. If the protected information cannot be reasonably segregated from the other information in a manner that allows for disclosure of the information meaningful to the person making the request, the Authority may withhold the entire record.

8. RESPONSE TO REQUEST

8.1 The Authority will give a written response to a request within the prescribed time limit. The response may furnish all the requested records that are subject to disclosure, or may advise the person making the request that the requested records, or some of them, are not subject to disclosure.

8.2 A denial of a request for records must be in writing and must state the grounds for the denial. Any denial must be signed and dated by the public records coordinator. A denial must state that the person making the request may administratively appeal the denial by complying with Section 9, ADMINISTRATIVE APPEAL, or by seeking an injunction in the Superior Court pursuant to AS 40.25.125. A denial must also state that the election to pursue an injunction in the Superior Court will have no adverse effect on the person's rights before the Authority, and an administrative appeal from a denial of a request for public records requires no appeal bond.

8.4 A denial is considered issued at the time the denial is either delivered to the United States Postal Service for mailing, or hand-delivered to the person making the request, or sent by email or fax to the email address or fax number the person making the request has provided to the Authority.

8.5 If the Authority fails to provide a response by the expiration of the prescribed time limit, as it may be extended, the person making the request may consider the request denied.

9. ADMINISTRATIVE APPEAL

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9.1 When a request for public records is denied in whole or in part, the person making the request may appeal the denial to the Executive Director. An appeal to the Executive Director must be in writing and must be mailed or hand-delivered or submitted by email or fax within 60 calendar days after the denial is issued. The appeal notice must state the date of the denial, identify the specific records the person making the request contends should have been provided by the Authority, and give a short statement of reasons why the person making the request believes the denial was incorrect.

9.2 After receipt of an appeal, the Executive Director may request the public records coordinator to compile a record of the appeal, which will consist of the request made for public records, the Authority's response, correspondence between the Authority and the person making the request regarding the request, the appeal notice, other documents provided by the person making the request, and other pertinent documents of the Authority.

9.3 The Executive Director will issue a written decision on the appeal no later than 20 working days after the record of the appeal is prepared, or 20 working days after the determination is made that no record of the appeal is required. However, the Executive Director may extend the time for making a decision on the appeal to a period not to exceed 40 working days if the Executive Director finds that additional time is needed to properly consider the appeal. The Executive Director will give the person making the request notice whenever the Executive Director extends the time for making a decision on an appeal. The notice must state the date by which the Executive Director expects to make a decision.

9.4 The Executive Director's written decision on an appeal shall constitute the final action of the Authority on the matter.

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9.5 If the Executive Director's written decision on an appeal is that records will be disclosed, the decision must inform the person making the request of the date by which the records will be provided, which shall not be later than 20 working days after the date of the written decision.

9.6 If the Executive Director's written decision on an appeal is a denial of the appeal, the decision must state the reasons for the denial. The decision to deny an appeal must also inform the person making the request that the decision is final and that the person may obtain judicial review of the Authority's action on the request for public records by filing an appeal with the Superior Court within 30 days after the decision denying the appeal is mailed or otherwise distributed to the person making the request.

10. FEES

10.1 When the Authority duplicates requested records and the duplication is 50 or fewer pages, the fee for the duplication shall be \$0.25 per page copied. Two-sided documents shall be counted as two pages for the purpose of calculating the duplication fee.

10.2 When the Authority duplicates requested records and the duplications exceed 50 pages, the Authority may charge a fee of \$0.25 per page plus the cost for the Authority's staff to perform the duplication based on the loaded (overhead including benefits) hourly rate of the staff member, or the Authority may have the duplication performed by an outside vendor of the Authority's choice, in which case the vendor's actual charges will be the duplication fee.

10.3 If a request for records requires the staff of the Authority to expend more than five person-hours of time to search for and assembling the requested records, the person making the request shall pay the Authority for the staff time involved. The fee for the staff time will be based on the loaded (overhead including benefits) hourly rates of the staff members involved in searching for and assembling the records.

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10.4 Any fees must be paid to the Authority before the records are provided. To facilitate advance payment, the public records coordinator may estimate the fees for duplication and staff time expected to be incurred in responding to a particular request, and the Authority may require the person making the request to pay the estimated amounts in advance. Once the actual fees and charges are determined, the Authority shall reconcile the account with the person making the request by refunding any excess amount or asking the person to pay any outstanding balance.

10.5 The Authority may waive or reduce a fee or charge in accordance with AS 40.25.110(d).

11. ELECTRONIC SERVICES AND PRODUCTS

11.1 A request to the Authority for electronic services and products involving public records must be in writing. Upon receipt of an oral request for electronic services and products, the public records coordinator will inform the person making the request of the written request requirement. The Authority may provide the person making an oral request with a form that, when completed by the person, will constitute a written request for electronic services and products.

11.2 Notwithstanding the preceding paragraph, the Authority may elect to treat an oral request for electronic services and products as valid. The decision to grant or deny an oral request is within the sole discretion of the Authority. An oral request is deemed denied if not granted within 10 working days after the oral request is made to the Authority. The only remedy if an oral request is not treated as valid or is not granted is to make a written request in accordance with the preceding subsection 11.1.

11.3 A person seeking electronic services and products must describe the services and products sought with enough specificity so that the Authority can ascertain the specific services and products being requested.

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11.4 The Authority may require a written agreement, signed by the person making the request and by an authorized employee of the Authority, before beginning work required to provide electronic services and products. The agreement will include:

11.4.1 Estimated fees and charges, and payment arrangements;

11.4.2 Provisions to protect the security and integrity of the information system;

11.4.2 A release of liability for the Authority stating that the Authority is not liable for any harm or injury suffered as a consequence of any inaccurate information the person making the request may obtain through the electronic service and product;
and

11.4.3 Any provisions necessary to protect software copyrights.

11.5 The Authority will respond to a request for electronic services and products with the time period specified in Section 6, TIME FOR RESPONSE TO REQUEST, subject to the time period being extended as is provided for in Section 6.

11.6 If a request for electronic services and products is denied, the Authority will provide a response to the person making the request explaining the reason for the denial. When a denial occurs because the Authority cannot reasonably provide the requested work, the Authority will inform the person making the request how to obtain the public records that would have been used to satisfy the request for electronic services and products. A denial will contain the information required under subsection 8.2 of these Procedures.

11.7 In responding to any request for electronic services and products, the Authority will abide by the provisions of Section 7 of these Procedures, CONFIDENTIALITY AND NON-DISCLOSURE, with respect to protecting public records that contain confidential information and that are not subject to disclosure.

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11.8 Nothing in these Procedures obligates the Authority to provide electronic services and products relating to public records if doing so would require the Authority to compile or summarize its public records in a way it does not already do so. The Authority is not required to manipulate its data to create new records in response to a request. Nevertheless, the Authority may determine that it will manipulate its data to create electronic services and products for a person making a request if (a) the Authority can do so without impairing its functioning, (b) the data is protected from intentional or accidental modification and destruction, and (c) the person enters into the agreement provided for in subsection 11.4 and pays the fees the Authority requires. When the same or similar circumstances are involved, the Authority will not make electronic services and products available to one member of the public and withhold them from other members of the public.

11.9 A person making a request may pursue an administrative appeal of a denial of a request for electronic services and products in accordance with Section 9, ADMINISTRATIVE APPEAL.

11.10 The fees the Authority imposes for electronic services and products shall be in accordance with the Department of Administration's regulations governing electronic services and products.

12. DEFINITIONS

12.1 In these Procedures, the following terms have the meanings given below:

12.1.1 "Applicable law" means any federal, state, local, municipal or administrative constitution, charter, statute, ordinance, order, decree, rule, regulation, or principle of common law that applies under the circumstances.

12.1.2 "Authority" means the Alaska Industrial Development and Export Authority.

12.1.3 "Electronic services and products" has the meaning set out in AS 40.25.220(1).

12.1.4 "Executive Director" means the Executive Director of the Authority.

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12.1.5 “Working day” means every day except Saturday, Sunday or a legal holiday for State of Alaska employees.