

FOREST PRACTICE FILES

5492

(No. 6 January 1999)

A file for each THP, with work completion reports, stocking reports, correspondence, and other reports relating to that plan will be kept. Emergency notices and notices of exemption from timber harvesting plan requirements will be filed in the same way as THPs. Forest practice inspection reports will be filed either with the THP or the other notice to which they apply.

When an enforcement action is contemplated or initiated, either a separate forest practice enforcement file will be established that is not a public record or public access to the file will be restricted until the file is purged. Forest practice inspection reports made specifically as part of the investigation, including the Confidential Report of Forest Practice Recommendations (LE-80) and any Supplementary Investigation Report (LE-71), file memo, other report, or correspondence developed for the investigation and enforcement process that is confidential, will be placed in the enforcement file. Copies of the THP, notices, previous forest practice inspection reports, the operator's license application, and other documents that are public records may be made and transferred into the enforcement file for ready reference. This is to separate documents that are confidential from those that are public records while an enforcement investigation or action is under way.

RELEASE OF RECORDS

5492.1

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The department may occasionally receive requests for copies of records or files, including electronic files, maintained in our offices. In those instances where there is ongoing litigation, such requests may, for example, be in the form of subpoena, subpoena duces tecum (i.e. subpoena for records), request for discovery or copy of the official record. When such a request is received, the attorney handling the case for the department (e.g. Deputy Attorney General [AG], District Attorney [DA]) should be contacted before responding to the request. Such requests are not always legally correct and the department may wish to oppose the request. If there is no assigned attorney, or the department is not a party to the litigation, contact Sacramento Headquarters for assistance, through channels if time permits.

The general requests for records will come from the public at large, including RPFs, LTOs, landowners, special interest groups and attorneys. Except for the alleged victim as discussed in Section 5492.2, no one has automatic rights to any record unless he/she is a litigant or the litigant's attorney in a pending case.

The release of records is controlled by the Public Records Act (Gov. Code Section 6250, et seq.) and Evidence Code Section 1040, et seq. These laws begin with the fundamental principle that all records maintained by any public agency are open to the public. The law then specifically exempt from disclosure certain records or portions of records.

A request for records under the Public Records Act (PRA) must be made in writing, reference the PRA and be specific as to what records are being requested. However, as a service to the public, release of records can be made, and frequently are made, based on a verbal request especially when only a small amount of material is involved. When the request is substantial, consideration should be made to submitting the request in writing so that the department can plan for and respond to the request as detailed below.

The individual making the request for records (requestor) must bear the cost of reproduction of the record, generally billed at our standard per page reproduction rate. Where the cost of reproduction is substantial, the requestor should always be advised of the cost before proceeding, and consideration should be given to demanding payment before providing copies. If the record is in electronic format, the cost might be just that of a computer disk, if no significant staff time is required to retrieve the record. To avoid possible corruption of the computer system, disks supplied by the requestor should not be used.

At the department's discretion, and depending on the availability of space and staff to oversee the activities, the requestor may bring his/her own copy machine into the office and copy records from files directly. However, the requestor does not have explicit rights to this activity, publicly or privately. The records are those of the department, and the security of those records is entirely within the department's domain.

The department has 10 days in which to respond to the requestor with an answer as to how it will comply with the request, including the anticipated cost, and may state that departmental staff will not proceed without further authorization or payment. If the department does not have the record, this should be clearly stated. If the department does not intend to release a record, this must be stated and the code section exempting the record from disclosure must be cited.

The rule of reasonableness must apply with regard to the department's response. If the department can easily assemble the records within the 10-day period and provide them to the requestor, that should be done. If the request involves many records, or files which the staff actively needs, the department can set the time, place and method by which the records can be reviewed or copied. The staff need not engage in any analysis, summarization of information or significantly change work schedules or staffing in order to meet a time frame imposed by the requestor. Staff workloads, emergency assignments and other staff considerations may all be considered when developing a response.

In cases where the requestor is dissatisfied with the department's response, he/she may file an action with the superior court that will decide if the department's response or determination not to release a record is correct. The court may review the record "in camera" to verify if it is one of the exempted records and/or will weigh the department's need for confidentiality against the public interest in releasing the document. If the court rules against the department, the department may have to pay the requestor's attorney fees and the department must provide the record. There are no other sanctions.

PUBLIC AND CONFIDENTIAL RECORDS

5492.2

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The most common public records within the Forest Practice Program are the files on a Timber Harvest Plan, Nonindustrial Timber Management Plan, Program Timberland Environmental Impact Report (and associated documents), Timberland Conversion, and exemption and emergency notices. This includes the entire record of review and approval of the plan or notice, inspection reports (except those done for a specific enforcement action and placed in the case file), notices of violation and all accompanying documents and correspondence.

The following is a partial listing of the types of records that are handled by Forest Practice Program personnel. There are some records that are confidential, but may be released to certain individuals under specified circumstances. Any questions about release of records should be brought to the attention of Sacramento Headquarters before releasing the record.

Archaeological Addendum as required in forest practice rules is always confidential under Gov. Code Sections 6254 (r) and 6254.10. However, disclosure is permitted pursuant to the forest practice rules.

Field notes, notes in general, telephone message notes, preliminary analysis, preliminary drafts and drafts which are not incorporated into the record of a proceeding are confidential and may be removed from any file before making it available, according to Gov. Code Section 6254 (a).

Investigations of complaints against a Peace Officer are always confidential and the instructions contained in the handbook section on complaints should be followed ([1000 Personnel Handbook, Section 1085](#)).

Audit inspection reports are public records unless they meet any of the following criteria:

1. The report is part of an individual's personnel file.
2. The report is a document that will be used as evidence in an action against an employee.
3. The report is a document that will be used in an enforcement action.

4. The report is a result of a Category II compliance inspection in which a complaint was made against a Peace Officer.

Since it is not always known whether or not a report might be used in one of the above situations, release could significantly compromise an inspector's, or other individual's right to privacy. Therefore, it is the department's policy to black out all names that might appear on an audit report before the release of that report (Gov. Code Section 6254 (c), Evidence Code Section 1040, et seq., and others).

Law enforcement case files and reports are always considered confidential, and may not be disclosed even to the subject of the investigation (Gov. Code Section 6254 (f)).

The only exception to this policy is that the alleged victim of the crime or insurance carrier can be given the names, addresses and statements of witnesses (other than confidential informants) and others involved in the incident, also maps, diagrams, description of property involved and associated dates and times. Also, anyone who has suffered property damage due to arson or fire (or other activities not related to those of the department) shall be given the above information. However, under no circumstances is this disclosure required if it might endanger either successful completion of the investigation or a witness. In general, release of any information to anyone during the investigation could compromise the investigation and would normally not be done unless the investigation was to take a prolonged period of time.

Once the investigation has been completed, the case is either turned over to the DA or AG for prosecution or filed for future reference. If it is in the hands of the DA or AG, any requests for disclosure should be referred to that attorney. If the case is filed, then the defendant will obtain certain information from the department's report through discovery. However, that action does not render the report public. The only parts of the record that are considered public are those disclosed through the court and can be obtained from that source, the DA or AG.

The case files which were either not sent to the DA or AG, or were returned without action should remain confidential and retained pursuant to [Section 5493](#), Retention of Records.

Although the statute of limitation on misdemeanors is one year, the limit for actions by the DA or AG under the Business and Professions Code Section 17,200, et seq. is 4 years, and the limit for Timber Operator Licensing actions is 3 years. Thus, while it may appear that the case is "closed," the case may become relevant in another venue in future years and might never be formally closed.

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE FOR FORMS/FORMS SAMPLES SITE LINK.

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