

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
STATE BAR OF ARIZONA	)	Administrative Order
PUBLIC RECORDS POLICY	)	No. 2017 - <u>102</u>
	)	
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Pursuant to Rule 32 (m) of the Rules of the Supreme Court, the State Bar is required to conduct meetings under public access policies adopted by the Supreme Court. The State Bar Board of Governors submitted a proposed policy for the Court's approval.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the attached public records policy is adopted effective January 1, 2018.

Dated this 31st day of August, 2017.

FOR THE COURT:

SCOTT BALES
Chief Justice

STATE BAR OF ARIZONA
PUBLIC RECORDS POLICY

(a) Authority and Effective Date. This policy is adopted pursuant to Rule 32(m), Rules of the Supreme Court of Arizona, and is effective January 1, 2018.

(b) Purpose. This policy shall govern access to Bar records, including those that deal with its constitutional, regulatory or statutory duties. A presumption of public access exists for Bar records, but public access to Bar records is not absolute and shall be consistent with reasonable expectations of personal privacy, restrictions in statutes or court rules, or as provided in court or protective orders.

(c) Scope. This policy governs public access only to those records in the possession of the Bar and its staff or stored under Bar ownership and control in facilities or servers. A person or entity entrusted by the Bar with the storage and maintenance of Bar records is not subject to this policy and may not respond to a request for access to Bar records, absent express written authority from the custodian of Bar records or separate authority in policy or statute to grant access to the documents. Records solely in the possession of individuals not employed by the State Bar who serve on boards, committees, task forces, or sections that were prepared by the individuals and in their sole possession, including private notes, communications, and working papers, are not Bar records and are not subject to public access under this policy.

(d) Definitions.

1. “Access” means the ability to view or obtain a copy of a Bar record.
2. “Bar record” or “record” means all existing documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials, regardless of physical form or characteristics made or received in the course of any official business by the Bar that provide evidence of the organization, functions, policies, decisions, procedures, operations or other official activities of the Bar.
3. “Custodian of Bar records” or “custodian” means the Chief Executive Officer/Executive Director (CEO/ED) of the State Bar or the CEO/ED’s designee. The custodian is the person responsible for processing public requests for access to Bar records.
4. “Commercial purpose” means the use of a Bar record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names, addresses and contact information from Bar records for the purpose of solicitation or the sale of names, addresses and contact information to another for the purpose of solicitation or for any purpose in which the purchaser intends or can reasonably anticipate the receipt of monetary or other gains, or is the recipient of monetary or other gains, from the direct or indirect use of the Bar record.

(e) Bar Records - Public Records Policy.

1. The Bar shall make available for inspection and copying all Bar records, unless the record falls within the specific exemptions of this policy, any court rule or order, statute, or other policy adopted by the Board of Governors. Where identifiable interests in confidentiality, privacy of members or their clients, or the best interests of the Bar outweigh the presumption of openness, public access to some records may be restricted; however, in each case, the justification for the restriction shall be explained in writing by the custodian.
2. *New Records.* The Bar is not required to index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting, or redacting information from a record that is exempt from disclosure under this policy, or reproducing a record in non-original format, is not deemed to be creating a new record as defined herein.
3. *Redactions.* Any reasonably segregable portion of a Bar record shall be released to the requester after redaction of any portions that are exempt from disclosure under this policy. The custodian shall inform the requester if a Bar record is entirely exempt from disclosure, or if there is no reasonably segregable portion of a Bar record to release after the record is redacted in accordance with this policy.
4. *Exemptions.* In addition to exemptions referenced above, the following categories of Bar records are exempt from public access:
 - A. *Human Resources Records.* Records concerning individuals who are employees or who perform volunteer services are exempt, except for the following information:
 - (1) Full name of individual;
 - (2) Dates of employment;
 - (3) Current job title and description, and effective dates of employment;
 - (4) Name, location and phone number of division to which the individual is currently assigned;
 - (5) Information made public pursuant to the Bar's IRS Form 990 filing;
 - (6) Information authorized to be released by the individual to the public unless prohibited by law.
 - B. Specific information and records regarding:
 - (1) internal policies, guidelines, procedures, or techniques, the disclosure of which would reasonably be expected to compromise the conduct of disciplinary or regulatory functions, investigations, or examinations;

- (2) applications, investigations, awards, and hearing or proceeding records relating to legal specialization, fee arbitration, client protection funds, appointments and mandatory continuing legal education to the extent that they contain confidential personal information or information confidential under attorney-client privilege, the Rules of Professional Conduct, or other rules or law;
 - (3) records covered by attorney-client privilege, confidentiality, and/or by work-product doctrine; and
 - (4) any record that reflects deliberative, predecisional communications regarding the decision-making process of the Bar or its employees, including but not limited to drafts, briefing materials, recommendations, and advisory opinions.
- C. Valuable formulae, designs, drawings, computer source code or object code, and research data created or obtained by the Bar, including:
 - (1) Administrative or technical information regarding computer hardware, software, and networks;
 - (2) Information regarding the infrastructure, integrity, security, and use of computer and telecommunication networks, databases, and systems;
 - (3) Information describing the technical location, design, function, operation, or access control of computer networks, automated data processing or telecommunications systems;
 - (4) Information related to designs, drawings, computer source code or object code, research data, and user and/or system audit logs;
 - (5) Trade secrets, proprietary commercial information, and proprietary financial information obtained from any source;
 - (6) Security measures and surveillance techniques; and
 - (7) Information provided by the Bar in the procurement of computer and telecommunication networks, databases, services, and systems.
- D. Information regarding the infrastructure, integrity, and security of computer and telecommunication networks, databases, and systems. Information contained in, development and staging environments, and any system maintained for disaster recovery.
- E. Annual licensing or registration forms and related records, including applications for fee hardship waivers and any decision or determinations on the hardship waiver applications.

- F. Applications made pursuant to Rule 38 and Rule 39 of the Rules of the Supreme Court of Arizona to the extent they contain confidential information, information subject to attorney-client confidentiality, or information otherwise protected by rule, statute or policy.
- G. All applications and information about participants in the State Bar's Mentor Program, and all records pertaining to requests for advice, opinions or assistance submitted to: the Ethics Department, including the Ethics Hotline; the Member Assistance Program, Member Assistance Program Hotline, or Peer Support volunteers; and the Bar's voluntary law office management program (currently called Practice 2.0), including Trust Account and Practice Management Hotlines and the lending library. Statistical information not descriptive of any readily identifiable person or persons may be disclosed.
- H. Records pertaining to lawyer regulation, including lawyer discipline and unauthorized practice of law, shall be subject to disclosure only under Rules 70 and 80 of the Rules of the Supreme Court of Arizona.
- I. Proprietary records and trade secrets of entities involved in business relationships/partnerships with the Bar if disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest and/or competitive market position of the Bar.
- J. Continuing legal education materials prepared by or for the State Bar, including but not limited to, Continuing Legal Education, Lawyer Assistance Programs, State Bar sections or committees, or Publications departments of the State Bar of Arizona, including but not limited to registration lists, individual affidavits compiled for members for the purpose of tracking a lawyer's compliance with mandatory requirements, written materials, workbooks, PowerPoint slides and other proprietary information.
- K. All security plans, codes and other records that provide for the security of information, individuals, or property in the possession or custody of the State Bar against theft, tampering, improper use, trespass, or physical abuse or violence.
- L. Information about and content of emails hosted on the azbar.org email exchange as a service to members of the Bar, except for official email communications to and from Bar staff, boards or committees that meet the definition of a Bar record under (d)(2).
- M. All metadata, regardless of whether the document to which it pertains is subject to disclosure under this policy or is exempt from this policy.

(f) Bar Records-Procedures for Access.

1. *General Procedures.* All records requests shall be in writing, on the form provided by the State Bar for that purpose, and submitted to the Bar records custodian. The Bar must implement this policy and adopt and publish on its website the custodian's contact

information and the procedures and fee schedules for accepting and responding to records requests by the effective date of this policy. The Bar shall promptly acknowledge receipt of the request, and shall communicate with the requester as necessary to clarify any ambiguities as to the records being requested. The custodian shall provide the records, consistent with this policy, within a reasonable time. Records requests directed to individuals other than the custodian will not be considered a formal records request. If the custodian determines that the request will result in a misuse of Bar records, is an abuse of this policy, or violates any portion of this policy, the custodian may deny the request per subsection (g).

2. *Commercial purpose.* When a person requests Bar records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the Bar records will be used. Upon being furnished the statement, the custodian may disclose such records subject to this policy and the fee provisions below.

3. *Charging of Fees.*

- A. Non-commercial purpose.

- (1) A fee may not be charged to view Bar records at the Bar's main office, subject to the provisions below.
 - (2) A fee may be charged for the photocopying or scanning of Bar records according to the fee schedule approved by the Board of Governors and published on the State Bar website.
 - (3) A reasonable fee may be charged for research or administrative services required to fulfill a request taking longer than one hour, including requests to view Bar records at the Bar's main office. The fee shall be assessed from the second hour onward.

- B. Commercial purpose.

- (1) The custodian shall collect a fee for the cost of:
 - (a) obtaining the original or copies of the records and all redaction costs; and
 - (b) the time, equipment and staff used in producing such reproduction.
 - (2) The custodian may make billing or payment arrangements with the applicant before satisfying the request, and is authorized to receive and hold deposits for estimated costs until costs are finally determined.
 - (3) A fee may be charged for the value of the reproduction on the commercial market as best determined by the custodian.

(g) Extraordinary Requests Limited by Resource Constraints. If a particular request is of a magnitude or burden on resources that the Bar cannot fully comply within a reasonable time due to constraints on time, resources, and personnel, the Bar shall communicate this information to the requester along with a good faith estimate of the time needed to complete the Bar's response. The Bar may attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the Bar's response, which may include a schedule of installment responses.

Requests for access may be denied that are determined:

1. to create an undue financial burden on Bar operations because of the amount of equipment, materials, staff time and other resources required to satisfy the request;
2. to substantially interfere with the mandated functions of the Bar;
3. to be filed for the purpose of harassing or substantially interfering with the routine operations of the Bar; or
4. to be submitted within one month following the date of a prior request, that is substantially identical to one received from the same source or applicant and previously denied, unless applicable rules, law or circumstances restricting access have changed.

(h) Denials. Denials must be in writing and shall identify the applicable exemptions or other bases for denial as well as a written summary of the procedures under which the requesting party may seek further review.

(i) Review of Records Decisions. A person who objects to a record decision or other action by the custodian may request review by the President of the Board of Governors or the President's designee.

1. A requester's application for review must be submitted within 10 days of the decision of the Bar's custodian, on such form as the Bar shall designate and make available.
2. The review process shall be informal, with no hearing, and limited to a summary review of the records requested and the denial decision. The President of the Board of Governors or designee will provide a written determination, supported by findings, to the requester.
3. The review process shall occur within 20 working days. If that is not reasonably possible, then within 20 working days the review shall be scheduled for the earliest practical date.