

Recommendation Paper for the Executive and Governance Committee

Freedom of Information (FOI) Procedures

May 2012

You will find attached a new document setting forth Freedom of Information Procedures. Most of our former Freedom of Information Policy is contained within the procedures. This approach is based on the assumption that there is nothing wrong with the categories of documents that may be withheld, the substance of the Policy, but that there is considerable room for improvement in the administration of the Policy. That Policy, now in effect for many years, provided only an outline of procedure, and basically left implementation to offices throughout the Authority. This has not resulted in consistent treatment of FOI requests.

Background

The Freedom of Information Policy was drafted within the first year or two of the Authority's existence. It was based on the federal Freedom of Information Act, 5 U.S.C. 552, adjusted with changes taken from D.C., Virginia and Maryland freedom of information laws, and some simply to reflect the Authority's specific issues.

The common structure of freedom of information laws is as follows:

- A statement that the agency is committed to openness and that all its records are available to the public.
- Except, that is, for a standard list of exceptions. In some jurisdictions, there are exceptions for specific agencies, or more narrowly defined categories of documents. Sometimes the exceptions are found in other rules or documents; a familiar example in our case would be the Contracting Manual, which includes provisions on what procurement records may be released.

The usual exceptions:

- Records whose release would compromise personal privacy
- Confidential business information, trade secrets
- Law enforcement and security records
- Legally privileged materials
- Deliberative materials

The above is the outline the existing Freedom of Information Policy follows. It then sets out a procedure that assumed all offices will handle initial requests for their own documents, and further assumes that each office will be familiar with FOI principles.

Unfortunately, the FOI policy was apparently not widely distributed within the Authority, and was not readily available to the public, at least, not until it was posted on the Authority website. There have been occasional internal disputes about the release of documents, without clear authority to resolve them. The revised policy attempts both to simplify matters for the public and clarify responsibilities internally.

The Proposal

The effort here is to reform the procedures of the FOI policy and make them more understandable to the public. Its main procedural points:

1. Freedom of Information requests are not necessary for most records.
2. Most key Authority documents, including financial data, annual reports, regulations and policies, Board minutes, agendas and resolutions, are readily available at www.mwaa.com.
3. For records not found there, requesters, if they know, should call the office that has the documents they want.
4. If they do not know, a contact point is identified.
5. Anyone wishing to make a formal Freedom of Information request should send it to the Freedom of Information Officer in the Secretary's Office, who will assemble the documents requested and respond.
6. Responses require the approval of the Secretary and consultation with the General Counsel.
7. Each response will set for the reasons for nondisclosure; documents shall be redacted, not withheld in their entirety; there is no obligation to create a new record to satisfy a request; and costs may be assessed.
8. Requesters not satisfied with the response may appeal to the Executive and Governance Committee of the Board of Directors, addressing their appeal through the Secretary. The Committee's decision will be final.

Freedom of Information Policy

The Metropolitan Washington Airports Authority is committed to transparency in all its operations. From the beginning, it has maintained its own Freedom of Information Policy that continued the disclosure rules in force at the two Airports from the enactment of the federal Freedom of Information Act in 1966. All its records are available to the public, except those that are not required to be disclosed pursuant to the exemptions set out in Part 3 below.

Given its commitment to transparency, the Airports Authority encourages anyone interested in its activities to seek information informally. This document is designed to assist in that process, and is divided into three parts.

Part 1 identifies records easy to get from the Authority's website; Part 2 provides contacts for answering questions and help in obtaining other records; Part 3 provides a formal Freedom of Information procedure for obtaining Authority records that are not readily available, and includes standards for the withholding of certain types of records.

Part 1 – Documents Generally Available

The Airports Authority makes most of its important records readily available, principally through the Authority website, www.mwaa.com, under the "About the Authority", "Business Information" and "News and Publications" tabs. There anyone can read and download many records. The following are among those to be found there:

Board of Directors documents

(About the Authority tab – Board of Directors – Reference Materials):

- Membership
- Committees and Committee assignments
- Calendars and Schedules
- Minutes of Board and Committee Meetings
- Resolutions
- Papers prepared for Board and Committee Meetings
- Bylaws

- The Code of Ethical Responsibilities for Members of the Board of Directors
- The Delegations of Authority
- Freedom of Information Policy
- Provisions of the District of Columbia Code establishing, jointly with the Commonwealth of Virginia, the Metropolitan Washington Airports Authority
- Provisions of the Commonwealth of Virginia Code establishing, jointly with the District of Columbia, the Metropolitan Washington Airports Authority
- Provisions of the United States Code, authorizing the transfer of Washington National and Washington Dulles International Airports to the Metropolitan Washington Airports Authority, with conditions.
- Documents related to the Dulles Corridor Metrorail project.

Business Information

(Business Information tab)

- Contracting Manual and forms
- Construction Opportunities
- Concession Opportunities
- Equal Opportunity Programs

Other Records

(About the Authority tab – Financial)

- The Budget
- Comprehensive Annual Financial Reports
- Monthly Financial Statements
- Airline Rates and Charges
- Master Trust Indenture
- Official Statements

(About the Authority tab – Annual Reports)

- Annual Reports
- Comprehensive Annual Financial Reports

(About the Authority tab – Regulations and Policies)

- Regulations

- Code of Ethics for Employees
- Airline Use and Lease Agreement

Part 2 – Contacts

The Airports Authority maintains its principal corporate offices at 1 Aviation Circle on Ronald Reagan Washington National Airport. Records are kept there, at the airport offices at both Reagan National and Washington Dulles International Airport, and at the Dulles Corridor Metrorail Project office at 1593 Spring Hill Road in Vienna.

To obtain records informally, questions or requests can be directed to any office in the Authority likely to have them. If uncertain which office to call, contact the Secretary's office, 703-417-8740, which will refer you to the right office.

Part 3 – Formal Freedom of Information Procedures

I. Where to file a request – Formal Freedom of Information requests for records located anywhere within the Authority should be addressed to the Freedom of Information Officer, Office of the Secretary, MA-BD, Metropolitan Washington Airports Authority, 1 Aviation Circle, Washington, D.C. 20001-6000. They can also be submitted to [\[FOI@mwaa.com\]](mailto:FOI@mwaa.com). Questions may be directed to the e-mail address or to 703-417-8740.

II. Content of a request – Such requests should identify the records requested or set out as clearly as possible their nature, state the format requested (paper or electronic) and provide a telephone number and/or an e-mail address for clarifying communications.

III. Internal processing – The Freedom of Information Officer will assure a copy of the request is directed to the office holding the requested records, and will respond to a request as soon as possible, but not later than within two weeks of the receipt of the request. The Freedom of Information Officer will keep a docket of all Freedom of Information requests.

IV. Requests sent elsewhere – Copies of written FOI requests submitted to offices other than the Office of the Secretary will be promptly provided to the Freedom of Information Officer.

V. Response – The Authority’s written response shall (a) provide the records requested, (b) explain why more time is required to respond, or (c) deny the release of records, in whole or in part, based on the exemptions in paragraph VII below. If denied, the withheld records shall be identified, and reasons shall be provided for their withholding. Responses may not be sent without the concurrence of the Secretary and appropriate consultation with the General Counsel’s Office.

VI. Appeal – If a request is denied in whole or in part, or not responded to within two weeks, the requester may appeal to the Chairman of the Legal Committee of the Board of Directors. Such an appeal should be clearly identified as a Freedom of Information appeal, and addressed to the Secretary of the Authority at the address in paragraph I, above. The Committee Chairman’s decision will be final.

VII. Reasons for withholding – Records or portions of records in the following categories of exemptions may be, but are not required to be, withheld from disclosure. Records are rarely withheld in their entirety; when an exemption applies to only a portion of a requested record, the rest of the record will be released. Any decision to withhold must set out the reasons for doing so, based on the exemptions stated below:

A. Personal Privacy. Personnel, payroll and financial records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. The name, position and salary of Authority employees, however, are public information.

B. Confidential Business Information.

(1) Confidential business information of the Authority: records containing commercial, financial, or proprietary information which, if disclosed, could harm the competitive or negotiating position of the Authority; and

(2) Confidential business information provided by others and held by the Authority: records containing commercial, financial or proprietary information provided from outside the Authority, if the submitter claims a privilege for the information and gives adequate reasons why protection is necessary, or the information has been identified as exempt in the Authority Contracting Manual.

(3) Confidential procurement records, such as proposals, offers, bids and proposal scoring records, the withholding of which is addressed in the Authority Contracting Manual.

C. Law Enforcement and Security Records. Records compiled for law enforcement and security purposes, but only to the extent that and as long as the production of such records would (1) interfere with investigative or enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source and confidential information furnished only by the confidential source; (5) disclose law enforcement and security techniques and procedures not generally known outside the law enforcement community; (6) cause a suspect to flee or evade detection; (7) result in the destruction of evidence; or (8) endanger the life or physical safety of an individual.

D. Privileged Documents. Records subject to a generally recognized privilege, such as the attorney work product privilege and the attorney-client privilege; records that would not be available to a person in litigation with the Authority; and records with respect to matters addressed by the Board of Directors in Executive Session.

E. Pre-Decisional Documents. Records containing analyses and recommendations with respect to matters to be decided by the President and Chief Executive Officer or the Board of Directors, except to the extent the analyses and/or recommendations are disclosed or otherwise addressed in a final decision document. Documents prepared for the Board of Directors and its committees and not otherwise exempt from disclosure under paragraph VII are normally made available at www.mwaa.com before the meeting at which the matters addressed in the documents are to be discussed, but only after they have been provided to the Directors.

VIII. Other Considerations – Only existing records are subject to release. The Authority does not create new records in response to a Freedom of Information requests, including records summarizing data or other information. Only records held by the Authority can be released, paper records in its own files or electronic records on its own servers; this Policy does not reach records held by vendors, contractors, or other third parties. In addition, personal notes, papers and any other records created and maintained by

the preparer solely as work papers for personal use are not treated as Authority records.

IX. Fees – Requests for a limited number of readily available records that do not require significant staff resources to locate and produce will normally be answered without charge. More substantial requests will be assessed fees to cover the costs of locating the requested records and in producing and delivering hard or electronic copies of the records. A schedule of such fees will be provided to the requester; if the projected fees exceed \$250, a 50 percent deposit may be required before Authority resources are committed to locating and producing the requested records.