

RHODE ISLAND FIRE SAFETY CODE

BOARD OF APPEAL AND REVIEW



Access to Public Records Regulations

**FIRE SAFETY CODE BOARD OF APPEAL AND REVIEW
ACCESS TO PUBLIC RECORDS REGULATIONS**

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Section I: Authority

These regulations are promulgated pursuant to R.I. Gen. Laws § 38-2-1, *et seq.* ("*Access to Public Records*"), § 42-35-2 (a), and § 42-7.3-9.

Section II: Purpose

- A. To establish regulations to implement R.I. General Laws § 38-2-1, *et seq.* ("*Access to Public Records*") relating to access to public records maintained by the Fire Safety Code Board of Appeal and Review, and to comply with R.I. General Laws § 42-35-2(a) and § 42-7.3-9.
- B. To identify and delineate categories of records exempt from disclosure.
- C. To provide the public and the Fire Safety Code Board of Appeal and Review [hereinafter the Board] personnel with regulations that set forth the rules and procedures applicable to access public records maintained by the Board.

Section III: Policy

The Fire Safety Code Board of Appeal and Review recognizes both the public's right to access public records and the individual's right to dignity and privacy. It is the Board's policy to facilitate public access to all public records that may be disclosed in accordance with R.I. Gen. Laws § 38-2-1, *et seq.* It is also the policy of the Board to make all public records in the Board's possession available for public inspection and copying consistent with applicable state or federal law, unless otherwise prohibited by a court of competent jurisdiction.

Section IV: Scope

- A. The Board is responsible for the management and administration of the services provided by the Board commissioners and administrative staff.
 - a. The Board shall keep records of its examinations, correspondences, files, meeting minutes, decisions and other official actions in accordance with RIFC § 1.10.5.4.
 - b. Responsibility for maintaining a properly indexed record of Board Variances issued on or after January 1, 2004 lies within the Department of Public Safety's Division of the State Fire Marshal in accordance with R.I. Gen. Laws § 23-28.3-5(b) and RIFC § 1.11.1.
- B. Members of the public may access public records maintained by the Board through the Access to Public Records Act, R.I. General Laws § 38-2-1 *et seq.*, by making a request consistent with the Board's access to public records guidelines.

Section V: Procedure for Requesting Public Records

- A. The Board adheres to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*, and has instituted the following procedures for members of the public to obtain public records.
- B. A written request is not required for records available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public.
- C. Members of the public can request public records from the Board by contacting the Board Office of the Executive Director, which is the Board's designated public records unit.
- D. Written requests to inspect or copy public records should be sent to the Board that describes the records being requested. It is suggested, but not required, that requests be submitted on the form provided by the Board (APPENDIX A). Records request forms are available on the Board's website, [www.fsc.ri.gov] and at the Board's Headquarters.

- E. Written requests may be mailed, hand-delivered, e-mailed or sent via facsimile. Requests by mail should be sent to Fire Safety Code Board of Appeal and Review, Office of Executive Director, 2 Regan Court – Mathias # 56, Cranston, RI 02920. Hand-delivered requests may be made during the Board’s regular business hours, Monday through Friday, 8:00 a.m.-4:30 p.m. Facsimile requests should be sent to (401) 462-0941 and e-mail requests directed to fsc.fsc@doa.ri.gov.
- F. In order to ensure that the Board is able to respond to the request as efficiently as possible, the request should identify the documents or information being requested with as much specificity as possible. If the description of records being requested is not sufficient to allow the Board to identify and locate the requested records, the Board will notify the person requesting such records that additional information is needed in order to properly respond to the request.
- G. You are not required to provide identification or the reason you seek the information. Your right to access public records will not depend upon providing identification or reasons.
- H. Copies of public records will be provided electronically, by facsimile or by mail in accordance with the requesting party’s choice, unless complying would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The requesting party is responsible for the actual cost of delivery, if any.
- I. The Access to Public Records Act allows a public body ten (10) business days to respond to a request for records, which can be extended an additional twenty (20) days for good cause, which will be explained in writing by the Board.
- J. Any denial of access to records, in whole or in part, will be provided through a written response to the requestor indicating the reasons for the denial of access to records or for the denial of certain information contained in a record that is otherwise public pursuant to R.I. Gen. Laws § 38-2-2. The written response will also include the process for appeals outlined in R.I. Gen. Laws § 38-2-8.
- K. Any individual who receives a denial for copies of requested records or the ability to inspect records may petition the Chairman of the Board for a review of the determinations. The Chairman shall make a final determination whether or not to allow public inspection within ten (10) business days. If the denial is confirmed, the individual may file a complaint with the Office of the Attorney General, who will then investigate and make a determination. The individual may also file a lawsuit in Superior Court.

Section VI: Guidelines for Requests for Public Records

R.I. Gen. Laws § 38-2-2, (*"Access to Public Records"*) specifies records which, for the purposes of that chapter, **are public**.

Public record(s) means all: Documents, Papers, Letters, Maps, Tapes, Photographs, Films, Sound recordings, Magnetic or other tapes, Electronic data processing records, Computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities)

Other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business.

The Access to Public Records Act requires public bodies apply a case-by-case balancing test to non-exempt records to determine whether the privacy interests of individuals outweigh the public's interest in disclosure. That balancing requires a public body to consider both "the public's right to access to public records and the individual's right to dignity and privacy..." R.I. Gen. Laws § 38-2-1.

R.I. Gen. Laws § 38-2-2, (*"Access to Public Records"*) specifies records which, for the purposes of that chapter, **are not public**.

Records that **are not deemed public** are:

- Records relating to a client/attorney relationship
- Records relating to a doctor/patient relationship including all medical information relating to an individual in any files.
- Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C 552 et. seq.
- However, records of employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls that **are deemed public** include:
 - Name
 - Gross salary
 - Salary range for position
 - Total cost of paid fringe benefits
 - Gross amount received in overtime and any other remuneration in addition to salary
 - Job title
 - Job description
 - Dates of employment
 - Positions held with the state, municipality, or public works contractor or subcontractor on public works projects
 - Employment contract
 - Work location
 - Business telephone number
 - City or town of residence

- Date of termination
- Any information in pension records regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries, unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.
- Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.
- Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.
- All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information:
 - Could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings;
 - Would deprive a person of a right to a fair trial or an impartial adjudication;
 - Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
 - Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority, or any private institution which furnished information on a confidential basis or the information furnished by a confidential source;
 - Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions;
 - Could reasonably be expected to endanger the life or physical safety of any individual.
- However, law enforcement records relating to management and direction of a law enforcement agency, and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult **are deemed public.**
- Any records which would not be available by law or rule of court to an opposing party in litigation.
- Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.
- Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.
- Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.
- Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.
- Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 26 of title 42.
- Preliminary drafts, notes, impressions, memoranda, working papers, and work products.
 Provided, however, any documents submitted at a public meeting of a public body shall be deemed public.
- Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations.

Provided, however, that a person shall have the right to review the results of his or her examination.

- Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.
- The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned.

Provided the law of eminent domain shall not be affected by this provision.

- All tax returns.
- All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.
- Records of individual test scores on professional certification and licensing examinations.
- Provided, however, that a person shall have the right to review the results of his or her examination.
- Requests for advisory opinions until such time as the public body issues its opinion.
- Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.
- Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 18 of title 8 are exempt from the operation of this chapter.
- Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.
- Printouts from TELE-TEXT devices used by people who are deaf or hard of hearing or speech impaired.
- All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state
- Credit card account numbers in the possession of state or local government.
Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island General Law § 9-1.1-6.

The Board is not required to reorganize, consolidate, or compile data not maintained in the form requested, except the extent that such records are in an electronic format and the Board would not be unduly burdened in providing such data.

All records initially deemed to be public records which any person may inspect and/or copy shall continue to be public records whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

Section VII: Hours and Supervision of Inspections

- A. Individuals who request to inspect records, as opposed to obtain copies, deemed to be public pursuant to R.I. Gen. Laws § 38-2-3, will be advised of when the records will be available for inspection, or an appointment will be made for them to inspect the requested records.
- B. The time frame for the Board to respond to requests to inspect public records is the same time frame applicable to responding to requests for copies of public records as set forth in Section (V) above.
- C. The inspection of public records must be accomplished in a manner which will provide for general supervision by authorized Board staff. This is necessary to prevent the misplacement or unauthorized removal of records or any other action that may impair the integrity of the public record.

Section VIII: Fees

- A. The cost for documents that are able to be copied on common business or legal size paper is fifteen cents (15¢) per page. The fee for electronic records or retrieval fees from a storage facility is not more than the reasonable actual cost of those records.
- B. There is no fee for the first hour of search and retrieval of documents by the Board. There will be a fee of fifteen dollars (\$15.00) per hour for each additional hour spent for search and retrieval. Multiple requests made within a thirty (30) day time period from the same requesting party for records shall be treated as one request.
- C. The Board will provide an estimate of the cost of a request for documents prior to providing copies. Upon request, a detailed itemization of the costs charged for search and retrieval will be provided.
- D. If a court determines the information requested is in the public interest, it may reduce or waive fees for search and retrieval costs.
- E. Board personnel will make copies of requested records. The Board does not have a copy machine available for use by the public to make copies.
- F. Official publications prepared by the Board in the discharge of their duties to inform the public on matters of public interest will be furnished free of charge when available.
- G. All promulgated rules and regulations for the Board are on file at the Office of the Secretary of State, and certified copies, thereof may be obtained through that office. They are also available on-line at the following websites:

www.sos.ri.gov

www.fsc.ri.gov

Section IX: Severability

Should any provision or part of these regulations or the application thereof to any individual or circumstances be rendered or declared invalid by a court of competent jurisdiction of the State of Rhode Island, such invalidation of such part or portion of these regulations should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

APPENDIX A

**FIRE SAFETY CODE
BOARD OF APPEAL AND REVIEW
PUBLIC RECORDS REQUEST FORM**

Date: _____

Name (optional): _____

Address (optional) _____

City/Town, State, Zip Code (optional): _____

Telephone Number (optional): _____

Records Requested: _____

If these records are not readily available at the time of your request, please advise whether you would like to:

Pick up the records Records to be sent by regular mail Records to be faxed to: _____

For Office Use Only

Request taken by: _____ Request Number: _____

Date: _____ Time: _____ **Records Available On:** _____

Records Provided: ____ Yes ____ No ____ In Part

Date response provided if any exemptions are claimed: _____

Cost for Records: Copies \$ _____ Search & Retrieval \$ _____

If you desire to pick up the records, they are expected to be available on the date listed above at the Board of Appeal & Review headquarters. If after review of your request it is determined that the requested records are exempt from disclosure for a reason set forth in RIGL § 38-2-2(4)(A) through (AA), the Board reserves its rights to claim such exemptions.

NOTE: If you choose to pick up the records but did not include any identifying information on this form, please inform the staff of the date that you made the request; the nature of the records requested and request number.