

## **Watershed Agricultural Council - General Transparency Policy**

The effectiveness of the Watershed Agricultural Council (hereinafter called WAC or the Council) has and will continue to be rooted in an all-inclusive approach to governance of the organization as well as planning and implementation of programs. The Council is committed to transacting business in an open and transparent manner. Although WAC is not subject to the New York State Public Officers Law, Pub. Off. Law § 84 *et seq.*, including but not limited to the Freedom of Information Law and the Open Meetings Law, and members of its board and committees are not public officers within the meaning of that law, WAC is nevertheless committed to transacting business in an open and transparent manner as further provided in this Transparency Policy.

### **Disclosure of Documents and Records:**

1. Policy.
  - a. The Council and Easement Committee will make available for public inspection and copying all records, except those that are exempt from disclosure as hereinafter set forth. Minutes of the Council, Executive Committee of the Council, and the Easement Committee will be available within thirty (30) business days after they have been approved, generally at the next meeting of the appropriate body. Minutes disclosed to the public will not contain information that is exempt from disclosure as provided herein or, if any such exempt information is contained in the minutes, such information will be redacted prior to the minutes being disclosed to the public.
2. Procedure.
  - a. Requests for documents should be made to the Executive Director of the Council. Within thirty (30) business days of the receipt of a written request for a document or record reasonably described, including, without limitation, a brief description of the document(s) requested, any applicable time periods, whether the requestor is requesting the documents for their individual purpose or on behalf of one or more parties or entities and the purpose for the request, WAC shall: (i) make such record available to the person requesting it, including with redactions to the extent such document includes information that is exempt from disclosure under this Policy, (ii) deny such request in writing or (iii) furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request as determined by WAC in its sole discretion, when such request will be granted or denied. In the event that WAC receives a subsequent request from a requestor while still within the time described above for furnishing a response, WAC's time for response for any pending request(s) shall be extended to coincide with the time for providing the response to the most recent request. WAC shall not deny a request on the basis that the request is voluminous. WAC shall make available only documents that actually exist. It shall have no obligation to produce, create or compile documents or records that

are not maintained by WAC, even if the information requested does exist in other forms.

- b. Upon payment of the reasonable fee prescribed therefor, WAC shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search.
  - c. WAC may charge a reasonable fee for the production of records in response to a request under this policy. For paper records, that fee shall not exceed 50 cents per page produced or the actual reproduction cost, whichever is greater. If records are produced in electronic form, that fee shall not exceed \$10 or the actual cost of the storage media or device on which such record is provided, whichever is greater. In addition, WAC may charge an amount equal to the hourly salary attributed to person assigned to search for and prepare a copy of the request, including any necessary redactions or modifications. If an outside service is required to prepare a response, WAC shall be entitled to charge the actual cost of that service.
  - d. WAC shall provide the estimated cost of providing a record to the requesting party prior to preparing a response. That estimated cost must be paid by the requesting party before WAC begins compiling the response. At the time WAC has prepared the response, it shall inform the requesting party whether the estimate differs from the actual cost incurred. If the actual cost is less than the estimated cost, WAC shall refund the difference. If the actual cost exceeds the estimated, the requesting party shall pay the difference before WAC provides the response.
  - e. WAC shall, provided it has reasonable means available, accept requests for records submitted in the form of electronic mail. WAC, in its sole discretion, may provide the requested documents in either paper form or digital or electronic form.
3. Documents and Records Exempt from Disclosure.
- a. The following documents and records are exempt from disclosure pursuant to this Policy:
    - (i) if they are specifically exempted from disclosure by state or federal statute;
    - (ii) if disclosed would constitute an unwarranted invasion of personal privacy as determined by WAC in its sole discretion;

- (iii) if disclosed would or could reasonably be expected to impair present or imminent contracts, contract negotiations, or collective bargaining negotiations;
  - (iv) are trade secrets, or commercial or financial information that is confidential or privileged, or that is otherwise submitted to WAC by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause or could reasonably be expected to cause substantial injury to the subject enterprise;
  - (v) are compiled for law enforcement purposes;
  - (vi) if disclosed could endanger the life or safety of any person;
  - (vii) are inter-agency or intra-agency materials which are not: (1) statistical or factual tabulations or data; (2) instructions to staff that affect the public; (3) final agency policy or determinations; or (4) external audits; (5) if disclosed, would jeopardize the capacity of WAC to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or (6) are documents which WAC determines are not appropriate for disclosure to the public, provided, however, that this exception shall not apply to meeting minutes of WAC, its executive committee or easement committee except to the extent such minutes contain information which meets another exemption in this Section 3(a);
  - (viii) are available from an agency or municipal entity that is subject to the Freedom of Information Law.
- b. Where possible, WAC may provide copies of records responsive to this request with information that is not subject to disclosure omitted or redacted.
  - c. The availability of information from other sources or in other locations, including prior documents requests or publicly available sources, shall not be construed as an admission that such information is not exempt from disclosure. WAC shall be entitled to make determinations regarding exemption from disclosure *de novo* with each request.
  - d. WAC may consider the ability to combine a response to a request for disclosure under this policy with other information or documents in order to determine whether requested documents are exempt from disclosure.

#### 4. Appeals.

- a. Except as provided in paragraph five, below, any person denied access to a record may within seven (7) business days appeal in writing such denial to the Council, which shall consider such appeal at its next meeting after receipt of such appeal,

and fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought.

- b. A person denied access to a record in an appeal determination under the provisions of subparagraph (a) of this section may initiate the Binding Dispute Resolution Process described below within thirty (30) days of such denial.

5. Special Conditions Related to Trade Secrets.

- a. A person who submits any information to WAC may, at the time of submission, request that WAC except such information from disclosure as a trade secret. Furthermore, a person or entity who submits or otherwise makes available any records to WAC may, at any time, identify those records or portions thereof that may contain critical infrastructure information, and request that WAC except such information from disclosure under this Policy. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure. The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure. Information submitted as provided in this paragraph shall be excepted from disclosure and be maintained by WAC separately from all other records until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.
- b. On the initiative of WAC at any time, or upon the request of any person requesting that a record be excepted from disclosure pursuant to this subdivision, WAC shall:
  - (i) inform the person who requested the exception of WAC's intention to determine whether such exception should be granted or continued;
  - (ii) permit the person who requested the exception, within ten business days of receipt of notification from WAC, to submit a written statement of the necessity for the granting or continuation of such exception;
  - (iii) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor; copies of such determination shall be served upon the person, if any, requesting the record and the person who requested the exception.
- c. A denial of an exception from disclosure under subparagraph (b) of this paragraph may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting the record in accordance with this subdivision:
  - i. Within seven (7) business days of receipt of written notice denying the request, the person may file a written appeal from the determination of the agency with

the head of WAC, the chief executive officer or governing body or their designated representatives.

- ii. The appeal shall be determined within ten (10) business days of the receipt of the appeal. Written notice of the determination shall be served upon the person, if any, requesting the record and the person who requested the exception. The notice shall contain a statement of the reasons for the determination.
- d. Binding dispute resolution to review an adverse determination pursuant to subparagraph (c) of this paragraph may be commenced pursuant to the binding dispute resolution process described below within thirty (30) days of such determination.

#### **WAC Open Meetings:**

- 1. WAC will provide notice of Council and Easement Committee meetings at least one week prior to the meetings on its web site, [www.nycwatershed.org](http://www.nycwatershed.org) with the exception of emergency meetings). WAC will also provide notice of such meetings by electronic mail to anyone who requests such notice by sending a request to [info@nycwatershed.org](mailto:info@nycwatershed.org).
  - a. The notice shall include the time and location of the meeting as well as a proposed agenda.
  - b. Meetings of the Council and the Easement Committee will be open to the public except when the Council or the Easement Committee goes into executive session for the purposes hereinafter set forth.
  - c. The agenda provided to the public will identify the topics proposed to be discussed in such executive sessions but will not include names or any other identifying information associated with specific properties to be discussed in executive session.
  - d. The Council and the Easement Committee will take minutes at all meetings, which will consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. Minutes will consist of a record or summary of the final determination of such action, and the date and vote thereon, provided, however, that such summary need not include any matter which is not subject to disclosure pursuant to this policy.
  - e. No voting may take place in executive session. The Council or the Easement Committee may go into executive session upon a majority vote of the members present, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, for the following purposes:

- (i) matters which will imperil the public safety if disclosed;
  - (ii) any matter which may disclose the identity of a law enforcement agent or informer;
  - (iii) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
  - (iv) discussions regarding proposed, pending or current litigation;
  - (v) contract or collective bargaining negotiations;
  - (vi) the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation or matters that, if discussed in public would constitute an unwarranted invasion of personal privacy;
  - (vii) the proposed acquisition, sale or lease of real property or interests therein, including the name of the property owner, the exact location of the property and the amount intended to be paid for the property or interest therein; or
  - (viii) other matters that would be exempt from disclosure if contained in a document or record pursuant to paragraph three under Disclosure of Documents and Records above.
2. Any person who is allegedly aggrieved by being barred from a public meeting or was allegedly damaged by the failure of WAC to provide notice of a public meeting in the manner set forth above may initiate the binding dispute resolution process described below within sixty days of the date the minutes of such meeting have been (or should have been, pursuant to this Transparency Policy) made available to the public. In any such proceeding, if the ALJ determines that WAC failed to comply with this policy, the ALJ shall have the power, in its discretion, upon good cause shown, to declare that WAC violated this policy and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this policy.
  3. An unintentional failure to fully comply with the notice provisions set forth in paragraph 1 above shall not be grounds for invalidating any action taken at a meeting of WAC or the Easement Committee.

#### **Binding Dispute Resolution:**

1. If a dispute arises in connection with WAC's compliance with this Transparency Policy, following any appeal provided for above, the allegedly aggrieved party may refer the dispute to binding arbitration by submitting a Demand for Arbitration to WAC or to the other party via certified mail with return receipt requested or by overnight mail. The

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request shall state with particularity the nature of the issue in question. WAC will thereafter appoint an arbitrator, who shall not be a member of the Council. The Arbitrator shall conduct the arbitration under the version of the AAA Commercial Dispute Resolution Procedures Expedited Procedure Rules then in effect and/or, upon the consent of all parties, a less formal procedure consistent with the nature and complexity of the dispute.

2. If a dispute consists of, in whole or in part, a challenge to the estimated or actual cost of the production of records under this policy, no Demand for Arbitration can be submitted before payment of that estimated or actual cost of production.
3. The Party requesting arbitration under this transparency policy shall bear all costs of the arbitration, including, without limitation, all costs for the Arbitrator's time and expense.
4. In the case of a decision by the Arbitrator that WAC failed to disclose a document or record that it should have disclosed pursuant to this Policy, the sole authority of the Arbitrator shall be to order its disclosure within a reasonable time frame. In the case of a decision by the Arbitrator that WAC took an action in violation of the open meetings policy contained herein, the authority of the Arbitrator shall be limited to rescinding the action or actions taken at such meeting that in fact damaged the party initiating the dispute resolution process (and then, only if the Arbitrator determines that rescission is the appropriate resolution in light of the circumstances presented). This binding dispute resolution process is intended to address only the failure of WAC to comply with this Policy. The Arbitrator shall not have the authority to review the substance of actions taken by the Council or the Easement Committee. The decision of the Arbitrator is binding upon the parties and may be filed and enforced as a judgment.