

## **RECORDS MANAGEMENT**

These procedures are intended to ensure the safekeeping of SANDAG records with administrative, legal, fiscal, programmatic, or historical value; provide ease of access to SANDAG records by staff; provide ease of access to SANDAG records by members of the public in accordance with SANDAG's Public Records Request Guidelines; ensure compliance with the California Public Records Act (CPRA) (Government Code section 7920.000 et seq.) and Government Code section 60201 et seq., and provide the necessary guidance to ensure proper records management, including retention and disposition.

SANDAG's records are a valuable resource. This policy provides procedures to ensure SANDAG's records are maintained in a consistent, orderly, secure, and accessible manner.

### **Procedures**

#### **1. Applicability**

This policy applies to SANDAG employees and non-SANDAG employees (NSEs) who create SANDAG business records. NSEs include, but are not limited to officials, such as the Board of Directors and committee members as well as consultants, contractors, partners, affiliates, volunteers, and SANDAG member agency employees.

#### **2. Policy Statement**

- 2.1 Records kept by SANDAG employees or NSEs because they are necessary or convenient to the discharge of SANDAG business are Business Records. Any and all Business Records generated in the course of SANDAG business are the property of SANDAG, unless otherwise agreed to in a contract document. Business Records include, but are not limited to, correspondence through email, text message, voicemail, memoranda, or other means; audio or video recordings, contracts, project files, reports, digital imagery data, prints, charts, maps and drawings. Persons to whom this policy applies should pay particular attention when using email, texts, instant messaging, or other less formal forms of communication to ensure that matters discussed are handled with due care and reviewed for professionalism, accuracy, and objectivity as they may be discoverable Business Records that can be used as evidence in litigation.
- 2.2 Business Records must be maintained in accordance with the SANDAG Records Retention Schedule (Schedule) until their retention period expires, after which the records should be disposed of promptly and appropriately. The periods shown in the Schedule are minimum time periods that do not start until the document and/or project is complete. Business Records can be maintained for time periods in excess of the retention period in the Schedule if the records are still needed for reference, but should be disposed of as soon as possible to conserve physical and/or digital storage space.

2.3 Unless otherwise mandated by law, all Business Records subject to retention on a temporary or permanent basis may be retained in an electronic format so long as the electronic retention system employs a combination of technologies, policies, and procedures that allows no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored.

### **3. Public Records**

3.1 SANDAG Business Records are records that contain information relating to the conduct of SANDAG business and generally include any record kept because it is prepared, owned, used, or retained by SANDAG in furtherance of official SANDAG duties. A record prepared by a SANDAG employee or NSE conducting SANDAG business has been “prepared by” SANDAG within the meaning of the CPRA even if the record is prepared using a personal account, on a personal device for which the SANDAG employee or NSE, receives no public reimbursement or on off-duty hours. SANDAG Business Records are subject to disclosure if they are in SANDAG’s actual or constructive possession. Constructive possession includes SANDAG Business Records in the possession of an employee or NSE. If a public records request seeks SANDAG Business Records held in a SANDAG employees’ or NSE’s non-SANDAG email, phone, or accounts, SANDAG may reasonably rely on its employees, officials or NSE’s to search their own personal files, accounts, and devices for responsive material.

3.2 Records that pertain to “housekeeping” matters that will not be needed for future reference should be disposed of as soon as possible. Communications that are primarily personal, containing no more than incidental mentions of SANDAG business, generally will not constitute Business Records. In addition, records that are purely personal in nature such as personal email or correspondence from a friend should not be treated as SANDAG Business Records. In order to prevent a claim that such records are subject to disclosure, and to prevent an unnecessary burden on SANDAG resources, records unrelated to SANDAG business should be purged from SANDAG computers and files.

3.3 SANDAG employees and NSEs may determine that certain records are not needed for future use or reference because they are notes or drafts that have been superseded by later versions. Consistent with the guidelines in the California Secretary of State Records Management Handbook, which recommend that records that have fulfilled their administrative, fiscal, or legal function should be disposed of as soon as possible, preliminary drafts, notes, and interagency and intra-agency memoranda that have been retained for less than 60 days and that are no longer needed for use or reference should be disposed of prior to the end of the 60-day time period. All such records that are kept for more than 60 days for use or reference, and that are not otherwise exempt, must be kept for a minimum of two years. Some records must be kept for longer than two years and the retention period for most records is contained in the Schedule. The time periods shown in the Schedule should be followed unless a document needs to be retained for a longer time period than that shown because the custodian believes the record is still needed for reference. All of the time periods shown for retention begin no sooner than the date the record is put in its final form.

- 3.4 After a SANDAG Business Record has been maintained for the required time period it should be disposed of promptly consistent with the Schedule. If records contain confidential or trade secret information, steps should be taken to ensure the records are not disclosed when they are destroyed.
- 3.5 At least once each year the Schedule will be reviewed and revised as needed. The Schedule will be circulated to the department directors for recommended changes and additions and reviewed by the Office of General Counsel. Changes to the Schedule must be approved by the Chief Executive Officer and Office of General Counsel and substantive changes shall be communicated to all SANDAG employees. Information regarding the Schedule will be included in the annual public records training conducted for employees. The most recent version of the Schedule shall be made available on the SANDAG website at [sandag.org/legal](http://sandag.org/legal).
- 3.6 Retention periods for records required for litigation, auditing, environmental review, or public records requests must be suspended and the records maintained in their original condition and format until the matter is resolved through consultation with the Office of General Counsel.
- 3.7 SANDAG is required to undertake reasonable efforts to assist the public in identifying records or information sought. In response to public records requests the Office of General Counsel works with employees and NSEs to identify responsive records. Records should be kept in an organized fashion and be easily identifiable. Electronic SANDAG Business Records shall be stored in a file storage location approved for active use by the SANDAG the Director of Business and Technology Services. Records that have been saved in electronic format do not need to be maintained in hardcopy unless otherwise stated in the Schedule.

#### **4. File Maintenance**

All SANDAG Business Records should be maintained in an organized fashion in a location that is easily identifiable in the event of a public records request. For example, project manager(s) and Contracts and Procurement personnel shall maintain centralized files for each project or procurement. Files should not contain records that are not needed for future use or reference such as preliminary drafts, working papers, or notes that have been superseded and are less than 60 days old, or "housekeeping" memoranda or emails.

#### **5. Records Containing Confidential or Trade Secret Information**

Records created at or received by SANDAG containing confidential or trade secret information must be marked as such and filed in a location where the records will be secure and inaccessible to third parties. Employees and NSEs should take all necessary steps to ensure that such records are not copied or disclosed to third parties. Once a record is submitted to SANDAG by a company or individual it immediately becomes subject to the California Public Records Act unless that party has expressly designated the record or portion thereof as confidential, proprietary, or trade secret. For example, unless a proposal or price list from a consultant or contractor is clearly marked as confidential or trade secret it will automatically become subject to a public records request. However, even if a consultant or

contractor marks a document as “confidential,” “proprietary,” or “trade secret,” this will not

necessarily exempt the document from disclosure under the California Public Records Act or other applicable laws.

## **6. CPRA Requests**

- 6.1 Responses to records requests shall be fully compliant with the CPRA and all other applicable laws.
- 6.2 All CPRA requests received from members of the public shall be treated as urgent and immediately referred to the Office of General Counsel. Timing on responses to CPRA requests is very important. Under the law, SANDAG shall determine within ten (10) calendar days from receipt of the CPRA request if the request, in whole or in part, seeks disclosable records in the possession of SANDAG.
- 6.3 SANDAG’s Public Records Request Guidelines shall be available to view on the SANDAG website and shall be consistent with this policy and applicable law.

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