

## **~~1053.0.0 — FREEDOM OF INFORMATION ACT/CHARGES FOR COPYING DOCUMENTS~~**

~~This establishes a uniform method and system for responding to requests for access to or copies of records as required under the Arkansas Freedom of Information (FOI) Act, codified beginning at Ark. Code Ann. 25-19-104. It also establishes a uniform standard regarding the possible charges for responding to FOI requests and for providing copies of documents to clients, DHS employees and the general public. This policy is applicable to all divisions/offices.~~

### **~~1053.1.0 — Definitions~~**

~~1053.1.1 — Compiling Information: The creation of a new data set or document.~~

~~1053.1.2 — Creating a Record: The process of creating a new data set or document.~~

~~1053.1.3 — Programming: Research of one or more databases and writing one or more new queries, or extracting programs, or both, based on that research, to create a new data set.~~

~~1053.1.4 — Public Records: Writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any form, required by law to be kept or otherwise kept and which constitute a record of performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. Public records does not mean software acquired by purchase, lease, or license. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records, except as specifically exempted by superseding federal or state law.~~

~~1053.1.5 — Readily Available Format: Any format in which the record presently exists.~~

~~1053.1.6 — Readily Available Manner: An existing data set or document.~~

~~1053.1.7 — Readily Available Medium: Any medium in which the record presently exists.~~

~~1053.1.8 — Readily Convertible Medium: Any medium to which the record can be converted without programming using existing software and equipment.~~

~~1053.1.9 — Reasonably Segregable Portion of a Record:~~

~~A. — An existing record after deleting any portion of the existing record that is not a public record, that can be produced with existing software and equipment, and with two (2) hours or less of programming; or~~

~~B. — An existing paper record upon which non-public portions of the record can be covered with an opaque marking.~~

~~1053.1.10 — **Special Request for Electronic Information:** A request to summarize, compile, or tailor electronic data in a particular manner, medium, or format in which the record is not readily available if the summarization, compilation, or tailoring will require more than two (2) hours of programming.~~

## **1053.2.0 — Access to Public Records**

~~1053.2.1 — The FOI Act requires that all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.~~

~~1053.2.2 — DHS will provide Arkansas citizens reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records.~~

## **1053.3.0 — FOI Requests**

~~1053.3.1 — An FOI request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.~~

~~1053.3.2 — An FOI request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort.~~

~~1053.3.3 — If the person to whom the request is directed is not the custodian of the records, the person shall so notify the requestor and identify the custodian, if known to or readily ascertainable by the person.~~

~~1053.3.4 — The FOI does not require the custodian of the record to compile information or to create a record in response to an FOI request.~~

~~1053.3.5 — No FOI request may be denied because public information is comingled with confidential information, unless the public information is not reasonably segregable from the confidential information.~~

~~1053.3.6 — DHS will comply with FOI requests to produce public records in any readily available format, manner, or medium, and in any readily convertible medium.~~

~~1053.3.7 — If information is deleted from a record, the amount of information deleted shall be disclosed on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.~~

~~1053.3.8 — Any decision to grant a special request for electronic information shall be made by the Chief Information Officer (CIO) and the affected division/office director, or the designees of the CIO, director, or both.~~

#### **1053.4.0 — Information Exempt from Disclosure**

FOI prohibits disclosure of the following information:

1053.4.1 — State income tax records.

1053.4.2 — Medical, adoption records, and education records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with the provisions of the Family Educational Rights and Privacy Act of 1974.

1053.4.3 — Grand jury minutes.

1053.4.4 — Unpublished drafts of judicial or quasi-judicial opinions and decisions.

1053.4.5 — Undisclosed investigations by law enforcement agencies of suspected criminal activity.

1053.4.6 — Unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices and the Attorney General.

1053.4.7 — Documents which are protected from disclosure by order or rule of court.

1053.4.8 — Files which, if disclosed, would give advantage to competitors or bidders.

1053.4.9 — Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy. However, all employee evaluation or job performance records, including preliminary notes and other material, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

1053.4.10 — The identity of law enforcement officers currently working undercover with their agency and identified in the Arkansas Minimum Standards Office as an undercover officer. Records of the number of undercover officers an agency lists are not exempt from this chapter.

1053.4.11 — Home addresses of non-elected state employees contained in employer records, except the custodian of the records shall verify an employee's city or county of residence or address on record upon request.

1053.4.12 — Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks, or applications thereon, to perform security functions, including, but not limited to, passwords, personal identification numbers, transaction authorization

~~mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein.~~

~~1053.4.13 — Other state and federal laws prohibit disclosure of client identifying information.~~

#### **~~1053.5.0 — Employees May View Their Records~~**

~~Any personnel or evaluation records exempt from disclosure shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative. The representative must be designated in writing by the employee.~~

#### **~~1053.6.0 — Results from Failure to Respond to FOI Request~~**

~~Failure to respond promptly to a request could result in litigation against this Department. Failure by a DHS employee, who is responsible for public records, to comply with this policy, could result in criminal charges against the DHS employee pursuant to Ark. Code Ann. 25-19-104, and discipline according to DHS Policy 1084, Employee Discipline: Conduct/Performance.~~

#### **~~1053.7.0 — Charges will be Assessed as Follows~~**

~~1053.7.1 — DHS staff will provide copies at no cost to the requesting person, except for requests exceeding one thousand (1,000) pages and special requests for electronic information. If any charge is made DHS will provide an itemized breakdown of the charges.~~

~~1053.7.2 — A charge of ten (10) cents per copy will be made for all copies exceeding 1,000 with advance payment (cash, certified check, money order and/or purchase order) required.~~

~~1053.7.3 — If DHS opts to grant a special request for electronic information, then DHS may charge the actual, verifiable costs of personnel time exceeding two hours associated with the tasks at the salary or rate of the lowest paid employee or contractor who, in the opinion of the Chief Information Officer, has the necessary skill and training to respond to the request.~~

~~1053.7.4 — A fee will not be charged for copies of records, policy, or other material when DHS is mandated by Federal Law, by State Law or DHS Policy to provide such documents. A fee will not be charged when document provision is deemed to be official departmental business.~~

#### **~~1053.8.0 — Disposition Of Money Collected~~**

~~Division/office directors will designate staff to issue receipts for all monies collected in their locations and forward the accumulated monies, less money order fee, to the Office of Fiscal Management, Accounts Receivable, Cash Receipt Unit,~~

~~Donaghey Plaza West, Slot # WG2, Little Rock, AR 72201 with sufficient information for the transaction to be processed. Monies will be forwarded quarterly or when a balance reaches \$50.00, whichever occurs first.~~

**~~1053.9.0 — Originating Section/Department Contact~~**

~~Office of Chief Counsel  
2<sup>nd</sup> Floor Donaghey Plaza South  
700 W. Main  
P.O. Box 1437/Slot S260  
Little Rock, Arkansas 72203-1437  
Telephone: (501) 682-8934~~

~~Replacement Notation: This policy replaces:  
DHS 1053, Freedom of Information Act, dated September 28, 2001  
and DHS 1050, Charges for Copying Documents for Release to the  
Public, dated May 8, 1989~~