

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

The effectiveness of the Watershed Agriculture 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 similar to the procedures contained in the Public Officers Law.

### **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 five 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 five business days of the receipt of a written request for a document or record reasonably described, WAC shall: (1) make such record available to the person requesting it, (2) deny such request in writing or (3) 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, when such request will be granted or denied. WAC shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome. 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. If WAC determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request,

WAC shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.

- c. 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.
- d. WAC shall, provided it has reasonable means available, accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail if the documents requested are available in digital format.

### 3. Documents and Records Exempt from Disclosure.

- a. The following documents and records are exempt from disclosure pursuant to this Policy: (a) if they are specifically exempted from disclosure by state or federal statute; (b) if disclosed would constitute an unwarranted invasion of personal privacy as determined by the Council; (c) if disclosed would impair present or imminent contracts, contract negotiations, or collective bargaining negotiations; (d) are trade secrets or are submitted to WAC by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise; (e) are compiled for law enforcement purposes; (f) if disclosed could endanger the life or safety of any person; (g) are inter-agency or intra-agency materials which are not: (I) statistical or factual tabulations or data; (II) instructions to staff that affect the public; (III) final agency policy or determinations; or (IV) external audits; and (h) 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.

### 4. Appeals.

- a. Except as provided in paragraph five, below, any person denied access to a record may within thirty 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 paragraph may initiate the Binding Dispute Resolution Process described below within sixty 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 apart by WAC 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 for a record 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 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 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 sixty 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:
    - (a) matters which will imperil the public safety if disclosed;
    - (b) any matter which may disclose the identity of a law enforcement agent or informer;
    - (c) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;

(d) discussions regarding proposed, pending or current litigation;

(e) contract or collective bargaining negotiations;

(f) 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;

(g) 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

(h) 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 requesting in writing that NYSDEC appoint an Administrative Law Judge ("ALJ") to act as an Arbitrator to conduct the arbitration and issue a binding determination. The ALJ 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. The party seeking arbitration shall provide simultaneous notice to the other party by certified mail with return receipt requested or by overnight mail. The request shall state with particularity the nature of the issue in question.
3. Except as provided below, each party will bear its own costs, including half of any costs assessed by NYSDEC for the ALJ's time and expenses. If the ALJ determines that WAC failed to comply with its Transparency Policy, WAC will be solely responsible for any costs assessed by NYSDEC for the ALJ's time and expenses. If the ALJ determines that WAC has complied with its Transparency Policy alleged aggrieved party will be solely responsible for any costs assessed by NYSDEC for the ALJ's time and expenses.
4. In the case of a decision by the ALJ that WAC failed to disclose a document or record that it should have disclosed pursuant to this Policy, the sole authority of the ALJ shall be to order its disclosure and to allocate the costs and expenses of the binding dispute resolution process as set forth above. In the case of a decision by the ALJ that WAC took an action in violation of the open meetings policy contained herein, the authority of the ALJ shall be limited to rescinding the action or actions taken at such meeting that in fact damaged the party initiating the dispute resolution process (if the ALJ determines that rescission is the appropriate resolution in light of the circumstances presented) and to allocate the costs and expenses of the binding dispute resolution process as set forth above. This binding dispute resolution process is intended to address only the failure of WAC to comply with this Policy. The ALJ shall not have the authority to review the substance of actions taken by the Council or the Easement Committee. The decision of the ALJ is binding upon the parties and may be filed and enforced as a judgment.