

MEMORANDUM

TO: Board of Trustees

FROM: Matthew Dent
Chair

Josh Nelson
General Counsel

SUBJECT: Review, discuss, and consider declining to assert privilege in redactions to three related public records requests for special counsel invoices and correspondence

RELATED STRATEGIC PLAN INITIATIVES: Long Range Principle #7 Governance

RELATED DISTRICT POLICY: Policy and Procedure No. 137/Resolution No. 1801 (Policy for the Provision of Records and Information to the Public)

DATE: February 16, 2023

I. RECOMMENDATION

That the Board of Trustees review, discuss, and consider declining to assert privilege in redactions to three related public records requests for special counsel invoices and correspondence. The General Counsel recommends asserting privilege in the redactions and not taking action.

II. BACKGROUND

The District previously adopted Policy and Procedure No. 137/Resolution No. 1801 regarding public records and public information (Policy). The Policy was adopted in 2011. In recent time, the Board has discussed revising and updating the Policy, including this as Budgeted Initiative #3 of Long Range Principle #7 Governance in the updated Strategic Plan. At its January 11, 2023 meeting, the Board of Trustees made an initial modification to the public records review process by requiring the Board of Trustees to review all assertions of privilege by staff. At its February 8, 2023 meeting, the Board of Trustees considered a draft updated policy and

provided feedback. A revised policy will be brought forward at a future meeting for potential adoption.

As the Board considers the revised policy, the Board requested the opportunity to consider deciding whether to assert attorney-client and attorney work product privilege in pending public records requests. This item provides an opportunity for the Board to do so based on the three related public records requests noted below:

Requestor and Date of Request	Request	Date Responded
Mike Abel (1-12-23)	Please provide by email: 1.unredacted invoices dated from Dec 2021 to Jan 10, 2023 from legal firm Thorndal Armstrong Delk Balkenbush Eisinger; 2. any emails, memorandum or other written materials related to the Scope of Services to be provided by Thorndal Armstrong Delk Balkenbush Eisinger per the engagement letter dated Dec 8, 2021 and accepted by General Manager Winquest Dec 20, 2021; 3. Any "work product" such as recommendations and/or opinion or report or legal definitions or other materials as the engagement letter dated Dec 9, 2021 stated opinion and recommendation were to be provided.	2-3-23
Frank Wright (1-27-23)	Balkenbush Invoices	2-6-23
Margaret Martini (1-27-23)	Balkenbush invoices, salary range, job description, Chateau invoice	2-6-23

For all three requests, the Public Records Officer based on the advice of the General Counsel withheld some documents and redacted invoices and emails. Redactions (including withholding entire documents) were applied to protect confidential information subject to the attorney-client and attorney work product privileges. The scope of these privileges was applied as narrowly as reasonably possible and narrower than could be asserted under applicable law.

This item is an opportunity for the Board of Trustees to consider whether not to assert privilege in the documents. If the Board decides to do so, the District will waive privilege in the redacted information and may waive privilege in related communications and information.

While the General Counsel understands the importance of transparency, it is important that the District has the ability to receive confidential legal advice. For this reason, the General Counsel does not recommend releasing unredacted documents.

III. FINANCIAL IMPACT AND BUDGET

No direct impact by this item.

IV. ALTERNATIVES

Below is an alternative to the recommended action:

1. Decline to assert privilege in the documents.

V. BUSINESS IMPACT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

VI. ATTACHMENTS

Policy and Procedure No. 137/Resolution No. 1801



Policy Resolution No. 137 – Resolution Number 1801

A POLICY FOR THE PROVISION OF RECORDS AND INFORMATION TO THE PUBLIC

WHEREAS, from time to time IVGID receives requests for the provision of records, documents and information contained in its files; and

WHEREAS, NRS 239 of the Nevada Public Records Law, and NRS 241 of the Nevada Open Meeting Law address the subject of provision of documents to the public upon request; and

WHEREAS, NRS 239 further provides guidance on the manner and timing for a response to such requests and for the charge of costs therefor; and

WHEREAS, IVGID also receives requests for information or explanation of information, and wishes to establish a policy for the response to such requests; and

WHEREAS, IVGID now wishes to clarify, amend and establish its Policy for the provision of records, documents and information to the public.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, that it hereby adopts the attached Policy for the provision of public records and information to the public.

BE IT FURTHER RESOLVED, that the attached Policy and procedures will remain in effect until changed or rescinded by the Board of Trustees.

* * * * *

I hereby certify that the foregoing is a full, true and correct copy of Resolution No. 1801, Policy Resolution No. 137, as amended and adopted by the Board of Trustees of the Incline Village General Improvement District on the 29th day of June 2011, by the following vote:



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**A POLICY FOR THE PROVISION OF
RECORDS AND INFORMATION TO THE PUBLIC**

AYES, and in favor thereof, Trustees Bea Epstein, Ted Fuller, Bruce Simonian, Charles Weinberger and Joe Wolfe.

NOES, None

ABSENT, None

/s/ Bruce Simonian

Bruce Simonian

Secretary, IVGID Board of Trustees

This Policy has a separate section for Public Records (I) and Public Information (II). This Policy supersedes prior Policy Resolution No. 131, and Resolution No. 1692.



Policy Resolution No. 137 – Resolution Number 1801

A POLICY FOR THE PROVISION OF RECORDS AND INFORMATION TO THE PUBLIC

I. PUBLIC RECORDS

A. Purpose

The following Policy and procedure, which shall be known also as the District's "Public Records and Information Policy," ("Policy") is intended to govern the issuance of public records contained in District files, and the inspection, copying and provision thereof. It will apply to all such requests for documents by the general public.

B. Policy Statement

Records and documents ("Record") in the possession of the District that are public records and are not otherwise declared to be confidential by state or federal law, and/or related governing interpretations of the law, will be made available to the public for inspection and copying under Nevada law.

C. Governing Law

This Policy and procedure is made in conformance with the Nevada Open Meeting Law (NRS 241), the Nevada Public Records Law (NRS 239) and District Policy. This Policy and procedure will remain in effect until changed or rescinded by the District's governing Board.

D. Policy Administrator

The General Manager may appoint a District "Public Records Officer(s)", whose duties shall be to oversee the execution and administration of this Policy. In the absence of such designation(s), the General Manager shall hold the title of "Public Records Officer" and shall directly administer this Policy.

The General Manager may name more than one "Public Records Officer" since District records may be maintained at multiple District locations.



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A POLICY FOR THE PROVISION OF RECORDS AND INFORMATION TO THE PUBLIC

E. General Provisions

1. Requests in Writing

All requests under NRS 239 and 241 regarding public records shall be governed by this Policy and shall be made in writing and submitted to the District's Public Records Officer at its Administration Building, 893 Southwood Boulevard, Incline Village, Nevada.

The District provides a "Public Records and Information Request" form for this purpose; however a clear written request from the Requester may also suffice. Oral requests may be made only to the Public Records Officer, or a delegated representative thereof; provided such request is thereafter reduced to written form to ensure the accuracy of the request and the ability to properly respond. E-mail requests will be accepted if addressed to: PublicRecordsOfficer@ivgid.org or to the specifically named Public Records Officer if known to the Requestor.

2. Content of Requests for Information or Records

Any request for inspection or copying of public records shall clearly state such a request, and shall clearly identify the Record subject to such request. A general description of a subject matter or topic or a blanket request for all general records shall not be adequate. The Requester is encouraged to provide the District with information about his/her purpose in requesting the Record sought, by title and date, if possible, so that the District may more easily identify and locate in its files the Record sought by the Requester. The District will attempt to identify and locate the specific Record responsive to the request.

3. Determination of Form, and Timing of Response to Request for Information or Records

The Public Records Officer will review all such written Record requests received and will determine whether the request complies with this Policy,



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and whether the requested Record exists. A response will be made within five (5) business days from receipt of the request, not counting that day, and thereafter as appropriate, in compliance with the provisions of NRS 239.0107.

4. Charges For Providing Documents

For the purpose of determining the cost, if any, for the locating, inspection or reproduction of a public Record, the Public Records Officer will apply the following categories which will govern the charges, if any, which will be assessed and the method in which the request will be handled:

a) Public Meeting Information

Copies of such Records or information, as contained in the District's published public meeting agenda packages, including minutes of District Board meetings and Board of Trustee actions, will be provided to the Requester at no charge, if the date of the involved meeting is provided.

b) Records, Documents or Standard Computer Files

Records which have been specifically identified as being able to be provided by e-mail, i.e. in digital form, will be provided to the Requester at no charge. Records not available in digital form and specifically identified will be provided as follows:

- I. Under five (5) pages, free of charge
- II. Over five (5) pages, a charge of \$1.00 (one dollar) per extra (over 5 pages) page will be charged.
- III. If the Requester, on a single visit, requests multiple documents, the first five (5) pages will be provided free of charge of the multiple documents and each page after that, of the multiple documents, shall be in accordance with II. above.



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c) Extraordinary Charges for Locating or Compiling Documents

If the public records request does not contain information allowing the prompt identification and location of the Record, or if a responsive Record cannot be found, the Public Records Officer shall so advise the Requester, and determine whether the Requester desires and authorizes staff to conduct an extraordinary public records search and/or Record compilation, and shall advise the Requester of the applicable charges. If the Requestor authorizes further action, the Public Records Officer shall undertake such a search and/or compilation, and the charge to the Requestor shall be based on the time spent in such search, at a rate of Thirty Five Dollars (\$35) per hour, or portion thereof. Payment in full shall be required at or prior to the delivery of any results.

The Public Records Officer shall attempt to estimate the time involved in any such search or compilation, and if the estimate exceeds two (2) hours, a deposit of Fifty Dollars (\$50) shall be required by the Requester prior to any further work.

5. Adversary Proceedings

In the event that a Requestor is a party or associated with a party in any pending or threatened litigation or administrative proceeding against or involving the District, the rules of discovery therein shall apply and supersede this Policy, and any request for Record shall be referred to the District's General Counsel, for information only. Requests for Records within Section 4(a) shall not be subject to this Section 5.



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6. Discretionary Authority

The General Manager shall have the discretion to interpret and to modify this Policy, on a case by case basis, as deemed necessary and appropriate under the circumstances.

II. INFORMATION

A. Purpose

The following Policy and procedure, which shall also be known as the District's "Public Information Policy", is intended to govern the issue of public information pertaining to the District or its operations, and the provision thereof by the District. It will apply to all such inquiries or requests for information by the general public to the District which are not requests for public records.

B. Policy Statement

The District will strive to make information regarding the District's business and operations available to the general public, and to assist the general public in understanding matters of general public concern. The District will take reasonable steps to respond to public inquiries and requests for information.

C. General Provisions

1. General Requests

Each Department shall establish an internal procedure for responding to oral or written requests for explanation or information from the public. Each such procedure shall provide for the referral of any extraordinary request to the General Manager for further action or response. Extraordinary requests include those requests requiring a substantial amount of time to respond, those requiring



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research or Record searches or interpretation, and others which would affect the normal operations of the Department.

2. Extraordinary Requests

The General Manager shall review and determine the appropriate responses to all extraordinary requests. The General Manager's decision on what is a reasonable response is conclusive. The General Manager shall have the ability and authority to offer special staff services necessary and appropriate to respond to an extraordinary request, with charges for such services to the Requestor on the schedule as set forth in Section I., E, 4. above.

3. Delegation of Authority

The General Manager may delegate the responsibility regarding extraordinary searches to any other staff person, at his or her discretion. The General Manager may appoint a Public Information Officer for the District, whose duties shall include responding to requests for information under this Policy. In the absence of such an appointment, the General Manager shall hold the title of "Public Information Officer".

4. Discretionary Authority

The General Manager shall have the discretion to interpret and to modify this Policy, on a case by case basis, as deemed necessary and appropriate under the circumstances.

5. Adversary Proceedings

In the event that a Requestor is a party or associated with a party in any pending or threatened litigation or administrative proceeding against or involving the District, the rules of discovery therein shall apply and supersede this Policy, and any request for information



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shall be referred to the District's General Counsel, for information only.