



Public Access to Records Policy and Privacy Policy

Presented to:

Administration Committee

by:

Office of General Counsel

May 12, 2005



PURPOSE

- To report on public comments received on the amended Public Access to Records Policy (PARP) and proposed Privacy Policy.
- To propose revisions to PARP and Privacy Policies based on public comment.
- To obtain the Administration Committee's approval to forward a Resolution to the Board of Directors amending the PARP and adopting a new Privacy Policy.

**MAKING
PUBLIC INFORMATION
PUBLIC.**

**KEEPING
PRIVATE INFORMATION
PRIVATE.**



BACKGROUND

- In 2000, the WMATA Board directed staff to adopt a policy to provide public access to WMATA records and include exemptions similar to those in the federal Freedom of Information Act (FOIA); the PARP was the result.
- In Fall 2004, staff recommended amending PARP to more closely align it with FOIA and federal practice.
- At the Board's direction staff also proposed a Privacy Policy to protect the privacy of persons who submit personal and confidential information to WMATA.



BACKGROUND (cont.)

Proposed amendments to PARP, Fall 2004:

- Conformed time frames for processing requests to FOIA time frames.
- Tailored FOIA's exemptions to WMATA operations.
- Provided for judicial review, including award of costs to substantially-prevailing plaintiff.
- Exempted individual SmarTrip[®] and financial information from disclosure except in limited instances.
- Established discipline and reporting requirements.

Board directed adding administrative appeal provisions to PARP.



BACKGROUND (cont.)

Proposed Privacy Policy, Fall 2004:

- Modeled on Federal Privacy Act.
- Prohibits disclosure of personal information without written permission of the subject of the information, unless exception applies.
- Requires WMATA to provide a privacy act statement when it collects personal information from an individual.
- Allows individuals to review, amend and/or disagree with facts contained in records.



BACKGROUND (cont.)

Proposed Privacy Policy, Fall 2004:

- Prohibits disclosure of SmarTrip® information except in limited instances.
- Provides that employees will be disciplined for unauthorized access or use of personal information and requires confidentiality statements.
- Authorizes court action for declaratory or injunctive relief for violations of policy, following administrative appeal.

Board directed staff to seek public comment on amended PARP and proposed Privacy Policy.



PUBLIC COMMENT

- Initial public comment period: December 17, 2004 to February 14, 2005.
- Invited public comment via WMATA WMATA website, newspapers and making copies of policies available at WMATA locations.
- Received comments from individuals and organizations including the ACLU; Metroriders.org; Reporters Committee for Freedom of the Press; Fairfax Privacy Council; Electronic Privacy Information Center; Maryland, Delaware, District of Columbia Press Association; and the Fairfax County Privacy Council.

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Metro's Board of Directors is considering altering Metro's policy regarding public access to records. The goal: to make it easier for the public to request copies of Metro's records.

In the same proposal, we have included a privacy policy designed to protect the legitimate privacy expectations of those who provide personal and confidential information to us.

We invite you to give us your comments on these issues. You may access the proposal online at MetroOpensDoors.com or request a copy by calling 202-962-1013. To submit comments, e-mail to comments@wmata.com or send to the Office of General Counsel, WMATA, 600 5th St., N.W., Washington, D.C. 20001.

We will accept public comments through February 14, 2005.



INFORMATION ANYTIME 202-637-7000



TTY 202-638-3780

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PUBLIC COMMENT (cont.)

- Revised PARP and Privacy Policies in response to initial public comments.
- Posted revised policies on website and welcomed final comments from April 4 through April 15, 2005.
- Received two additional submissions.

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PUBLIC COMMENT (cont.)

- Staff proposes to accept 75 percent of comments (compiled in the appendix).
- Majority of recommendations bring policies closer to federal law and practice.
- Most common bases to recommend rejection of comments are that they suggested deviating from federal law or practice, or would make disclosure of personal information more likely.



SIGNIFICANT PARP RECOMMENATIONS: POLICY STATEMENT

Staff recommends adding the following statements of policy to PARP section 1.0 to facilitate consistent interpretation of PARP provisions and maximize transparency:

- WMATA will interpret and apply PARP consistently with federal FOIA and practice to the greatest extent possible (comments 1 and 37- 39).
- PARP should not inhibit WMATA departments from continuing to release records in the ordinary course of business (comments 6, 58).



SIGNIFICANT PARP RECOMMENATIONS: DEFINITIONS

Staff recommends adding the following definitions in PARP 4.0 for clarity:

- Critical Infrastructure Information in PARP 4.1, and Sensitive Security Information in PARP 4.9, defined to clarify the meaning of these terms in PARP 6.1.1 and to tie them to federal definitions (comments 20-23).
- Privacy Policy in PARP 4.6.
- SmarTrip® Information in PARP 4.9 defined as “information submitted by customers for issuance of SmarTrip® cards or generated by use of SmarTrip® cards” to better describe the scope of this term in PARP 6.1.8.
- Clarify the definition of Records in PARP 4.7 to specify that an electronic record formatted in response to a request is subject to disclosure in response to that request. PARP requires such formatting when operationally and financially feasible (comments 8-12).



SIGNIFICANT PARP RECOMMENDATIONS: EXEMPTIONS

Staff recommends revising PARP 6.1.1 to narrow the scope of records in the exemption for Critical Infrastructure Information and Sensitive Security Information:

- Rather than the former reference to information that might compromise Metro safety and security, narrow exempt records to information that:
would compromise the security of the Metrorail and bus systems' infrastructure and/or rolling stock, computer systems or equipment that support the operation of the Metrorail/Metrobus systems, and/or the physical safety of its customers and/or employees
(comments 24 & 25).



SIGNIFICANT PARP RECOMMENDATIONS: EXEMPTIONS (cont.)

Staff recommends fully adopting FOIA exemption 4 in PARP 6.1.4, by eliminating extra protections for WMATA-generated business information:

- FOIA Exemption 4 exempts “trade secrets and commercial or financial information obtained from a person and privileged or confidential,” which is interpreted as information submitted to the government, not government-generated information.
- As proposed for initial public comment, PARP 6.1.4 added protection for WMATA-generated business information not found in FOIA.
- Staff recommends removing extra protections and fully adopting FOIA exemption 4 (comments 28 & 29).



SIGNIFICANT PARP RECOMMENDATIONS: EXEMPTIONS (cont.)

Staff recommends maintaining in PARP 6.1.6 the full protection afforded personal and medical information in FOIA exemption 6:

- Reject commenter's suggestion not to exempt personal and medical information in safety and accident reports (comment 31).
- Suggestion would result in disclosure of personal information not available to third-parties under FOIA (in absence of notarized release), such as the witness identities, home addresses and home phones on accident reports. Accident reports represent a large portion of requests.



SIGNIFICANT PARP RECOMMENDATIONS: EXEMPTIONS (cont.)

Staff recommends limiting scope of Exemption 6.1.8 (Smartrip® Information) and 6.1.9 (Financial Information) to personally identifiable information to permit release of records without revealing personal information:

- Exempt only personally identifiable Smartrip® Information, and permit disclosure of aggregate and de-identified information that could advance public understanding of WMATA operations (comments 32 & 33).
- Permit disclosure of completely de-identified financial information to similarly protect private customer information while allowing disclosure of information that could provide insight into WMATA operations (comment 34).



SIGNIFICANT PARP RECOMMENDATIONS: PROCEDURES

Staff recommends revising PARP 7.6 to protect confidential requester information and PARP 7.9.1 to accelerate record production beyond FOIA practice:

- Eliminate requirement that requester provide social security number; instead use other methods to confirm requester's identity; Privacy Policy 7.2.2 also revised to eliminate social security number requirement (comment 44).
- Endeavor to provide documents within 20 business days of request even though FOIA requires only a written response within that period (comment 46).



SIGNIFICANT PARP RECOMMENDATIONS: FEES

Staff recommends reducing per page copy cost in PARP 8.7 from 25 cents to 15 cents:

- Representative of charge by federal agencies (rough median); Department of Defense, for instance, charges 15 cents.
- Accounts for direct costs of black and white copies: equipment, material and personnel costs. Charge actual direct costs for other types of copies, e.g. color (comment 53).
- Privacy Policy 8.1 (fees for copying) also revised to adopt same copy fee structure.



SIGNIFICANT PARP RECOMMENDATIONS: ADMINISTRATIVE APPEALS, EXHAUSTION AND JUDICIAL REVIEW

Staff recommends revising PARP 9.1.3 and 9.2.3 to improve upon confusing FOIA time limits, and PARP 9.2 to clarify that administrative appeal is required:

- Extend time to decide administrative appeal to 30 days, rather than following FOIA's confusing 20 day initial period plus unilateral 10-day extension plus potential additional extension by agreement with requester (comment 54).
- Resolve former contradiction between PARP sections so that administrative appeal is mandatory prerequisite to judicial review (comment 55).



SIGNIFICANT PRIVACY POLICY RECOMMENDATIONS

Staff recommends revising Privacy Policy 6.1(A) (“need to know” exception) and 6.1(D) (law enforcement exception) to more accurately reflect their Privacy Act counterparts:

- As originally drafted, the law enforcement exception was limited to law enforcement agencies with jurisdiction in the Transit Zone.
- In response to MTPD concern, staff expanded the geographical area within which records can be disclosed for civil or criminal law enforcement activities (comment 61).
- Subsequent public comment prompted further research and staff has concluded that WMATA can more faithfully incorporate federal privacy protections and address public safety concerns by reinstating a modified Transit Zone limitation in the law enforcement exception and by limiting the need to know exception to when the need for the record is related to the purpose for which the record is maintained (comments 60-62).
- Revisions also reject commenters’ suggestions to wholly adopt Virginia toll information privacy statute or to require a court order, in favor of modified federal model (comments 59, 63).



STAFF RECOMMENDATIONS

- Staff recommends that the Administration Committee forward a Resolution to the Board of Directors amending the PARP and adopting a new Privacy Policy.
- Staff recommends an October 1 effective date in order to:
 - Designate, notify and train personnel who will administer amended Public Access to Records Policy and Privacy Policy;
 - Designate personnel with access to sensitive information and have them sign Information Protection Statements;
 - Establish routine uses, post routine uses on internet and develop statements and notices required by Privacy Policy; and
 - Identify frequently requested records and records of presumptive public interest and post on internet.



NEXT STEPS

- Adopt the amended PARP and proposed Privacy Policy.
- Designate Official Custodians (Responsible Officials in every department).
- Train Official Custodians and other staff regarding their duties under the Public Access to Records Policy and Privacy Policy (Office of Counsel in coordination with every department).
- Post frequently requested records on WMATA website (Office of Marketing).
- Select and post on website records of presumptive public interest (Official Custodians/Office of Marketing).
- Designate personnel with access to sensitive information who must sign Privacy Policy Information Protection Statement (Responsible Officials in every department).
- Establish routine uses for personal information collected by WMATA for systems of records and develop statements of routine uses to distribute when collecting this information. Develop notices of routine uses and post such notices on WMATA's website (Every department in coordination with Counsel/Official Custodians).

PRESENTED & ADOPTED:

SUBJECT: Amendments to Public Access to Records Policy and Adoption of Privacy Policy

PROPOSED
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Board adopted Resolution 2000-26 in which it declared that the policy of WMATA is to make public records available to the public for inspection and duplication to the maximum extent possible, unless the records are exempt under approved categories based upon the federal Freedom of Information Act, and authorized and directed the General Manager/Chief Executive Officer (GM/CEO) to develop appropriate procedures for implementing this policy; and

WHEREAS, On April 17, 2000, the GM/CEO approved WMATA Policy/Instruction No. 1.12/0, "Public Access to Records Policy" (PARP); and

WHEREAS, In the Fall of 2004, Staff proposed revisions to the PARP that reflected the change in administration of the PARP from the Assistant Chief of Staff to the Office of General Counsel, and included (1) judicial review, (2) modifications that aligned the PARP more closely with the federal Freedom of Information Act and federal practice, though tailored to WMATA operations, and (3) lessons learned from staff's experiences in responding to hundreds of requests; and

WHEREAS, The Board recognized that there are competing policy concerns between the need to guarantee the public as much access to information as possible and the need to protect the privacy expectations of persons who are the subject of records and directed Staff to develop a Privacy Policy; and

WHEREAS, In the Fall of 2004, Staff also proposed a Privacy Policy modeled on the federal Privacy Act that (1) applies only to information/data compiled in a system of records and retrieved by individuals' personal identifiers; (2) includes a requirement that when WMATA collects personal information from individuals to be maintained in such a system of records, these individuals will receive a Privacy Statement that tells them how the information may be used and allows them to decide whether they want to participate in the program under which personal data will be captured; (3) allows individuals to access their records, review such records, request amendments if they disagree with factual matters and file a "statement of disagreement" if WMATA refuses to amend the records; (4) requires consent prior to disclosure of records with limited exceptions; (5) requires WMATA employees who have access to such records to execute statements of confidentiality

concerning those records and provides for discipline up to and including termination if such confidentiality is breached; and (6) provides for judicial review; and

WHEREAS, Both the amended PARP and the proposed Privacy Policy reflect the need to tailor these policies to fit the unique needs of WMATA, an entity that provides mass transit services to hundreds of thousands of customers on a daily basis, by requiring that neither personal SmarTrip data nor financial data will be disclosed/released absent a court order, a request by the appropriate law enforcement official pursuant to an investigation, or a request by the authorized user of the SmarTrip card, upon proof of identity, for release only to the authorized user; and

WHEREAS, On December 16, 2004, the Board of Directors directed that an internal administrative appeal process be added to the amended PARP and proposed Privacy Policy; that the public be given a 60-day period for comment upon the proposed Privacy Policy and the amended PARP; that the draft policies be posted on WMATA's internet site for a 60-day duration for public comment; that hard copies be available at WMATA facilities for pick-up; and that other means of publicity be used to inform the public of the proposed policies and the opportunity for comment; and

WHEREAS, Consistent with the direction of the Board of Directors, Staff included internal administrative appeal processes in both proposed policies, made hard copies of the proposed policies available at WMATA facilities for pick up, mailed draft policies to entities and persons that Staff had reason to know would be interested in these policies, posted draft policies on WMATA's internet site, advertised in several newspapers, and invited public comment; and

WHEREAS, From December 17, 2004 through February 14, 2005, WMATA received comments from eight entities of which five contained detailed suggestions for the amended PARP and proposed Privacy Policy; and

WHEREAS, Staff revised the draft policies to respond to public comments; and

WHEREAS, From April 4, 2005 through April 15, 2005, WMATA posted on its website the revised draft policies and a comment matrix, which outlined the comments received and staff's recommendations, notified previous commenters of this posting, and invited additional comments; and

WHEREAS, At the end of the second comment period, one entity submitted additional comments on the amended PARP and one entity submitted additional comments on the proposed Privacy Policy; and

WHEREAS, Staff further revised the draft policies, attached as Exhibits A and B, to respond to the additional public comments; and

WHEREAS, Staff recommends that the Board of Directors adopt the Amended Public Access to Records Policy and the Proposed Privacy Policy, attached as Exhibits A and B; and

WHEREAS, Staff recommends that the amended PARP and proposed Privacy Policy take effect on October 1, 2005, to allow Staff to take the steps needed for proper implementation, such as:

- 1) Designating personnel responsible for administering the policies in every department;
- (2) Identifying personnel with access to sensitive information and requiring them to execute Information Protection Statements;
- (3) Training staff regarding their duties under the amended Public Access to Records Policy and Privacy Policy;
- (4) Identifying frequently-requested records and records presumptive of public interest and posting them on WMATA's website;
- (5) Establishing routine uses for personal information collected by WMATA for systems of records and subject to the Privacy policy;
- (6) Developing statements of routine uses to distribute when collecting information for systems of records; and
- (7) Developing notices of routine uses of personal information subject to the Privacy Policy and posting such notices on WMATA's website;

now, therefore, be it

RESOLVED, That the Board of Directors adopts the amended Public Access to Records Policy and proposed Privacy Policy; and be it finally

RESOLVED, That this Resolution shall be effective immediately, but the amended PARP and new Privacy Policy shall take effect on October 1, 2005, to allow Staff to take the steps necessary for proper implementation.

Reviewed as to form and legal sufficiency,

Mark R. Pohl

Acting for Carol B. O'Keeffe
Acting General Counsel

PROPOSED AMENDED
PUBLIC ACCESS TO RECORDS POLICY

1.0 POLICY:

It is the policy of the Washington Metropolitan Area Transit Authority (“WMATA”) to make official/public records, including electronic records, available to the public for inspection and copying to the greatest extent possible unless exempted from disclosure by a provision herein. WMATA will interpret and apply this Policy consistent with the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, and federal practice, including when determining whether to waive exemptions. WMATA’s disclosable records will be made available at the earliest feasible time and to the fullest extent permissible. ~~This policy shall not be construed to obligate WMATA to create records/documents to satisfy requests.~~ This policy shall not be construed to hinder the public’s access to records that departments and/or independent offices provide to the public in the course of doing business. Therefore, unless specifically prohibited by this Policy or the Privacy Policy and other applicable laws, departments and offices shall continue to make such records available without requiring adherence to the procedures of this Policy where such releases are consistent with the office’s or department’s established business practices.

2.0 PURPOSE:

WMATA, in the regular course of its business, receives from outside sources and generates, through its employees, significant quantities of records on a variety of topics. Some of the records, if released, could benefit selectively or could cause personal or economic harm to members of the public, other organizations, WMATA employees, or the interests of WMATA. This P/I establishes policy and procedures on making records available to the public by WMATA’s officers, employees, and agents.

3.0 SCOPE:

All records received or generated by WMATA, its officers, employees and agents in and through the regular course of WMATA’s business, and in WMATA’s control at the time of the request response are covered by this P/I unless such records are published and are offered for sale. Records shall be handled, safeguarded or released in accordance with this P/I in order to: (1) assure fair and equitable treatment of the public and of the officers, employees and agents of WMATA; (2) protect against detriment to WMATA’s interests or those of its officers, employees and agents, or those of the public; and (3) prevent a clearly unwarranted invasion of personal privacy. Accordingly, records in the possession of WMATA, its officers, employees and agents and received or generated in the regular course of WMATA’s business shall be released unless an exemption from release is identified herein in which case, to the extent possible, the exempt information shall be redacted and the redacted record(s) will be released.

4.0 DEFINITIONS:

4.1 “Critical Infrastructure Information” or “CII” is defined in 6 Code of Federal Regulations § 29.2 and is information not customarily in the public domain which

relates to the security of critical infrastructure or protected systems that WMATA or a third party has voluntarily submitted to the Department of Homeland Security in accordance with 6 CFR § 29.5.

a. “Critical infrastructure” is WMATA’s systems and assets, physical or computer-based, that are vital to national or regional defense and/or national or regional security. For the purposes of this Policy, examples of critical infrastructures include the Metrorail stations, rolling stock, and Operations Control Center computers/equipment that support the operation of the Metrorail/Metrobus systems. This definition is derived in part from the definition of critical infrastructure in the USA PATRIOT Act (see Pub. L. 107-56, section 1016; 42 U.S.C. § 5195c(e)) but was modified to apply to substantial disruptions of WMATA’s critical infrastructure that are regional, rather than national, in scope.

4.4 2 “Decision” is a writing by the Authority that either grants in whole, grants in part, or denies a request for records under this P/I.

4.2 3 “Direct costs” are expenses that are actually incurred in searching for and duplicating records to respond to a request for WMATA records. Overhead expenses such as the costs of space and heating or lighting the facility and housing the records are not included as direct costs.

4.3 4 “Official Custodian” is an employee who has been designated by a “Responsible Official” to process records in accordance with this P/I. For purposes of this P/I, the Responsible Official shall be considered an Official Custodian unless s/he has designated a subordinate as the Official Custodian and so notified the PARP Administrator.

4.4 5 “PARP Administrator” is the WMATA employee who is responsible for administering this policy.

4.6 “Privacy Policy” is the WMATA Privacy Policy (Policy Instruction (P/I)) that protects the privacy of individuals who are subjects of records maintained by WMATA in systems of records.

4.5 7 “Records” includemeans:

(a) any existing writing, drawing, map, recording, tape, film, microfilm, correspondence, form, card, photograph, optical disk, photostatic copy, and records stored by computer (electronic records) that are made or received by WMATA in connection with the transaction of public business. A record does not include uncirculated personal notes, papers, electronic records and any other records, including electronic records, that were created and retained solely as work papers for personal use; and

(b) records include only existing records, not a compilation(s) of existing records or the results of any additional work done to develop or create information in response to a request. However, where electronic files or databases can be readily searched and where specified data can be readily formatted, without imposing a significant

operational or financial burden on WMATA, such resulting electronic records shall constitute existing records for purposes of this Policy.

4.6 ~~7~~ “Requester” means any person or entity (including corporations, federal, state, local or foreign governments) who requests WMATA records under this P/I. A “Requester” shall not include union representative acting in his/her official capacity who requests records in connection with labor disputes arising under the subject collective bargaining agreement with WMATA.

4.7 ~~8~~ “Responsible Official” is an Officer, Deputy General Manager, Assistant General Manager, Chief Operating Officer, or Director of an Independent Office who shall be responsible for the implementation of this P/I for his/her department/office, including appointing an Official Custodian.

4.9 “Sensitive Security Information” (SSI) is information defined in 49 CFR § 1520.5, including, but not limited to, vulnerability assessments, security programs and contingency plans, that is generated by WMATA or a covered person under 49 CFR § 1520.7, that has been, or will be, submitted to the Transportation Security Administration or the Secretary of Transportation.

4.10 “SmarTrip[®] Information” is information submitted by customers for issuance of SmarTrip[®] cards or generated by use of SmarTrip[®] cards.

5.0 RESPONSIBILITIES:

5.1 The Office of Marketing shall be responsible for posting a current copy of this policy, PARP Quarterly reports, and WMATA’s frequently-requested ~~documents~~ records and records that WMATA determines are of public interest and likely to be frequently requested, with exempt information redacted, on WMATA’s internet website.

5.2 The PARP Administrator ~~shall be~~ is an employee in the Office of General Counsel who is responsible for all written and oral communications with the requester as provided herein, and for preparing PARP Quarterly Reports for the General Manager/Chief Executive Officer (GM/CEO).

5.3 Responsible Officials in each department or independent office shall develop, maintain, and update, as necessary, the department/office records retention schedule in compliance with section 4.03 of WMATA’s Records Management Policy (P/I 6.13) and shall designate and supervise Official Custodians of records for their respective departments or offices (“Official Custodian”). Responsible Officials shall notify the PARP Administrator of the name, phone, facsimile number, and e-mail address of the current Official Custodian for their respective departments or offices, and update this information as necessary.

5.4 The Official Custodians are responsible for (1) assuring that records are maintained/preserved in accordance with the department/office’s records retention schedule and WMATA’s Records Management Policy; (2) searching for and/or retrieving records in their respective departments or independent offices; (~~2~~ 3) forwarding any retrieved ~~documents~~ records to the PARP Administrator; (~~3~~ 4) providing a recommendation regarding redactions or withholding of ~~documents~~

records; (45) verifying that the records released and recommendations are accurate and complete ; (5 6) recording all direct costs associated with responding to each request; and (67) providing the Office's/Departments' frequently-requested documents records and records that the department or office determines are of public interest and will be frequently requested, with exempt information redacted, to the Office of Marketing for placement on WMATA's internet website:

- (a) Qualifications of Official Custodian: An official custodian must: (1) be a regular, full-time employee; (2) have been be employed within the department or office WMATA for a minimum of two years; and (3) have an education level of at least a Bachelor's Degree.
- (b) Evaluation Requirements for Official Custodian: Newly assigned custodians must receive at least five (5) hours of training regarding this Policy and the Privacy Policy within the first month of the assignment and must become thoroughly familiar with this policy and WMATA's information/record protection policies. The custodian's annual performance evaluation will include the employee's performance as the "Official Custodian" for the PARP.

5.5 The Assistant General Manager of the Department of System Safety and Risk Protection shall be responsible for identifying information/records that have been designated CII or SSI or that may otherwise qualify for ~~determine whether Exemption 6.1.1 of this Policy applies to requested records.~~

5.6 The PARP Administrator shall (1) assign requests to a department or office for response/necessary action ("assigned department or office") and/or coordination with other department(s) and/or office(s) ("coordinating department or office"); (2) assign a request number for future reference; (3) be responsible for coordinating and gathering the requested records from the Official Custodians in the assigned departments and/or offices, and shall be responsible for making the decision on redacting, withholding or providing records in response to requests; (4) determine, based on requests received, the most frequently requested ~~documents records;~~ and (5) shall direct the Official Custodian of the records to provide the Office of Marketing with redacted copies of frequently-requested ~~documents records~~ for placement on WMATA's internet website.

6.0 EXEMPTIONS FROM DISCLOSURE AND EXCLUSIONS FROM PARP:

6.1. This P/I ~~does exempts from disclosure not apply to matters~~ information/records to the extent that they are:

6.1.1 Critical Infrastructure Information and/or Sensitive Security Information and/or ~~are~~ records that if released, ~~could~~ would compromise the safety and/or security of a submitting entity's infrastructure and/or population or could compromise the safety and/or security of the Metrorail and bus systems' infrastructure and/or rolling stock, computer systems or equipment that support the operation of the Metrorail/Metrobus systems, and/or the physical safety of its customers and/or employees;

6.1.2 solely related solely to the internal personnel rules and practices of WMATA;

- 6.1.3 specifically exempted from disclosure by statute (other than the open records statutes of WMATA's signatories), provided that such statute (a) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (b) establishes a particular criteria for withholding or refers to particular types of matters to be withheld.
- 6.1.4 ~~trade secrets and commercial or financial data/information concerning WMATA or its employees that are confidential or privileged or obtained from WMATA customers, contractors, prospective contractors, or individuals or entities who have entered into memoranda of understanding or other agreements with WMATA that are confidential or a person and privileged or confidential;~~
- 6.1.5 intra-agency and inter-agency (WMATA Compact signatories and political subdivisions and representatives) ~~advice~~ memoranda or letters which would not be ~~regularly~~ made available by law to a party in ~~civil~~ litigation with WMATA
- 6.1.6 personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- 6.1.7 records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.
- 6.1.8 All SmarTrip® information that is identifiable personal information, unless the request is made:
- (1) pursuant to a court order; or
 - (2) by a law enforcement official that meets the requirements of Section 6.1(D) of WMATA's Privacy Policy; or
 - (3) by the registered user of the SmarTrip® card upon proof of identity for release only to that user.
 - (a) For purposes of this subsection, registered user is the individual or entity who/that has registered the SmarTrip® card with WMATA.

- (b) SmarTrip® information will not be released to a third-party even with the written consent of the registered user except as provided in (1) and (2) of this subsection.

6.1.9 All financial information, including transactional information, regarding individuals who are WMATA customers unless the request is made:

- (1) pursuant to a court order; or
- (2) by a law enforcement official that meets the requirements of Section 6.1(D) of WMATA's Privacy Policy; or
- (3) by the individual customer upon proof of identity for release only to the individual customer.

- (a) Financial information regarding individual customers will not be released to a third-party even with the written consent of the customer except as provided in (1) and (2) of this subsection.

(4) As used in this section "financial information" does not include information from which all personal identifiers have been removed and that cannot be used alone or in combination with other information to identify the subject(s) of that information.

6.2 Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this Section. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this section under which the deletion is made. If technically feasible, the amount of the information deleted and the reason for the deletion shall be indicated at the place in the record where such deletion is made.

6.3 Exclusions from PARP. Law Enforcement Records the Release of Which Could Interfere with Enforcement Proceedings

6.3.1 Whenever a request is made which involves access to records described in subsection 6.1.7 (A) and –

- (a) the investigation or proceeding involves a possible violation of criminal law; and
- (b) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

WMATA may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this policy.

6.3.2 Whenever informant records maintained by WMATA's law enforcement department under an informant's name or personal identifier are requested

by a third party according to the informant's name or personal identifier, WMATA shall treat the records as exempt from the requirements of this policy unless the informant's status as an informant has been officially confirmed.

~~6.4 Records which are disclosed to persons outside WMATA as part of the regular business of WMATA shall be subject to public disclosure. Where only limited disclosure (i.e., to less than the public at large) is appropriate, such limitations shall be indicated to the Requester.~~

6.54 Requests for employee records shall be released consistent with WMATA's Personnel Policy and Procedures Manual, other applicable WMATA policies and rules, including WMATA's Privacy Policy and applicable federal laws and regulations.

7.0 PROCEDURES:

7.1 Requests for records shall be in writing and sent by mail to the Office of General Counsel, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, D.C. 20001, or by electronic mail, or by facsimile to the attention of the PARP Administrator.

7.2. If a request for records is sent directly from the requester to a department or independent office, that department or office shall immediately forward the request to the PARP Administrator.

7.3 The date of receipt of a request shall be the date it is received by the PARP Administrator.

7.4 A request for records shall be considered an agreement by the requester to pay all applicable fees charged under Section 8 of this P/I, unless the requester seeks a waiver of all or part of the fees in writing, and such request is granted in writing by the PARP Administrator. A requester may specify in writing that he wishes to be notified in advance if the fees are expected to exceed \$50 or some larger sum.

7.5 The requester should describe the records that are being requested in sufficient detail to enable WMATA to locate them with a reasonable amount of effort. Specific information about each record that is being requested should include such information as the date, title or name, author, recipient, and subject matter of the record. If the PARP Administrator determines that the request does not reasonably describe WMATA records, the PARP Administrator shall contact the requester to advise that the request is insufficient and to identify what additional description is needed.

7.6 When a requester makes a request for records, not exempted under Section 6 of this P/I, containing personal or confidential information about the requester, the requester must verify his/her identity, state the requester's full name, current address, and date and place of birth and ~~provide the requester's social security number.~~ The requester must sign the request and the signature must be notarized.

- 7.7 If a request is made for records about another individual and release of such records would be an unwarranted invasion of the individual's privacy, the request must be accompanied by ~~either~~ a written release permitting disclosure of the records to the requester with the notarized signature of the individual or proof that the requester has the legal authority to act on the individual's behalf (e.g., a copy of a power of attorney). In the event that the individual is deceased, the request must be accompanied by proof that the individual is deceased (e.g., copy of death certificate or newspaper obituary) or and proof that the requester has the legal authority to act on behalf of the individual' deceased person's estate or that the requester is the designated beneficiary relating to the records requested or has the authority to act on the designated beneficiary's behalf. (e.g., a copy of a power of attorney)
- 7.8 If the requester is a guardian of an individual determined by a court to be incompetent, the requester must establish: (1) the identity of the individual who is the subject of the requested record by stating the name, current address, date and place of birth, ~~and social security number~~ of the individual; (2) the requester's identity, by stating his/her name, current address, date and place of birth ~~and social security number~~ as required by Section 7.6 of this P/I; (3) proof that the requester is the guardian by providing a copy of a court order establishing guardianship; and (4) a statement that the requester is acting on behalf of the individual in making the request.
- 7.9 Processing Requests. The PARP Administrator shall issue a decision, in accordance with the time limits of Section 7.10 of this P/I, notifying the requester whether the request was granted in whole, granted in part, or denied.
- ~~(1)~~7.9.1 If the request is granted in whole or in part, the decision shall include:
- (a) the direct costs to provide documents that respond to the request;
 - (b)(i) in accordance with section 8.9 of this P/I, to the extent feasible, copies of the documents shall also be included if the costs associated with the request is less than \$250, unless more than \$250 dollars is owed by the requester; or the documents are voluminous or unwieldy or difficult to retrieve; or notice regarding business records is required pursuant to section 7.11.5 of this P/I; or
 - (b)(ii) if document production is not feasible, the name of and telephone number of the person that the requester is to contact to arrange for an inspection of the records that shall be disclosed;
- ~~(2)~~7.9.2 If the request is denied in whole, or in part, the PARP Administrator shall make a reasonable effort to estimate the volume of any requested matter being denied, and shall provide such estimate to the requester, unless providing such estimate would harm an interest protected by the exemptions in Section 6 pursuant to which the denial is made. Where denial is in part, the records shall be marked or annotated to show both the amount and the location of the records deleted wherever practicable.

- (3)7.9.3 The PARP Administrator's decision shall include the following:
- (a) the reasons for the denial, citing the exemption(s) and explaining why it applies unless such explanation is otherwise prohibited;
 - (b) the name and title or position of each person responsible for denial; and
 - (c) the right to an internal administrative appeal under Section 9.1 of this P/I and subsequent right to judicial review under Section 9.2 and 9.3 of this P/I.

7.10 Time Period for Processing Requests.

7.10.1 Regular Processing of Requests. Within twenty (20) working days of receipt of the request, the PARP Administrator shall determine whether to comply with such request and shall immediately notify the requester of the decision in accordance with section 7.9.

- (a) In unusual circumstances, the time limits prescribed above may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days, except as provided in clause (b) of this subsection.
- (b) ~~With respect to a request for which a written notice under clause (A) extends the time limits for responding to the request, WMATA shall notify the person making the request~~ If the request cannot be processed within thirty (30) working days, and as allowed in clause (a), WMATA shall provide the requester the opportunity to limit the scope of the request so that it may be processed within that the thirty (30) day time limit or an opportunity to arrange with WMATA an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange such an alternative time frame shall be considered a factor in determining whether exceptional circumstances exist for purposes of subsection 9.3.5 of this Policy.
- (c) As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:
 - (1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

- (2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) the need for consultation, which shall be conducted at all practicable speed, with another entity having a substantial interest in the determination of the request or among two or more components of WMATA having substantial subject-matter interest therein.

7.10.2 Expedited Processing of Requests.

- (a) A requester may apply for expedited processing at the time of the initial request for records. Within ten (10) calendar days of its receipt of a request for expedited processing, WMATA shall decide whether to grant it, and shall notify the requester of the decision. Once the determination has been made to grant expedited processing, WMATA shall process the request as soon as practicable.
- (b) A request will be taken out of order and given expedited treatment whenever the PARP Administrator determines that the requester has established either of the following criteria:
 - (1) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
 - (2) an urgency to inform the public about an actual or alleged WMATA government activity, if made by an individual primarily engaged in disseminating information.

Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information; however, other requesters must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public as a whole, and not just a particular segment or group. "Urgency" contemplates that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not meet the test of urgency, nor would a news media publication or broadcast deadline unrelated to the news-breaking nature of the information.

- (c) A requester who seeks expedited processing must provide a written statement ~~that the requester certifies to be true and~~

~~correct to the best of the requester's knowledge, explaining in detail the basis for requesting expedited processing. WMATA is not obligated to consider a request for expedited processing unless it is accompanied by a signed statement that the "foregoing is true and correct to the best of" the requester's knowledge.~~

~~(1) WMATA will not consider the request unless accompanied by a written certified statement.~~

(d) No court shall have jurisdiction to review WMATA's denial of expedited processing of a request for records after WMATA has provided a complete response to the request.

7.11 Handling of Requests for Records Potentially Exempt Under Section 6.1.4 Business Information.

7.11.1 In general. Business information obtained by WMATA from a submitter will be disclosed only pursuant to this section.

7.11.2 Definitions. For the purposes of this section:

(1) Business information means ~~commercial or financial information records obtained by WMATA from a submitter that may be protected from disclosure under subsection 6.1.4 of this policy.~~

(2) Submitter means any person or entity from whom WMATA obtains business information, directly or indirectly. ~~The term includes corporations, state and local governments, etc.~~

7.11.3 Designation of business information. A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under section 6.1.4 of this policy. These designations will expire ten years after the date of submission unless the submitter requests, and provides justification for a longer designation period. Nothing in this provision shall override the requirements of the WMATA Procurement Procedures Manual where it applies.

7.11.4 Notice to submitters. The PARP Administrator shall provide a submitter with prompt written notice of a PARP request that seeks its business information as required by subsection 7.11.5 of this section, except as provided in section 7.11.8 of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under section 7.11.6 of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions pertaining to the information. When notification of a voluminous number of

submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

7.11.5 Where notice is required. Notice shall be given to a submitter wherever:

- (1) The information has been designated in good faith by the submitter as information considered to be protected from disclosure under subsection 6.1.4; or
- (2) WMATA has reason to believe that the information may be protected from disclosure under subsection 6.1.4.

7.11.6 Opportunity to object to disclosure. The PARP Administrator will allow a submitter ten (10) working days to respond to the notice described in subsection 7.11.4 of this policy and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of section 6.1 and, in the case of subsection 6.1.4, it must explain why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be deemed to have waived any objection to disclosure of the information. Information provided by the submitter that is not received until after WMATA's disclosure decision has been made shall not be considered by the PARP Administrator. Information provided by a submitter under this section may itself be subject to disclosure under this policy.

7.11.7 Notice of Intent to Disclose. The PARP Administrator shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the PARP Administrator decides to disclose business information over the objection of the submitter, the PARP Administrator shall give the submitter written notice, return receipt requested, which shall include:

- (1) a statement of the reason(s) why each of the submitter's disclosure objections was not sustained;
- (2) a description of the business information to be disclosed; and
- (3) a specified disclosure date, which shall be no earlier than ten (10) working days after the submitter receives the written notice under this subsection.

7.11.8 Exceptions to notice requirements. The notice requirements of subsections 7.11.4 and 7.11.7 of this section shall not apply if:

- (1) the PARP Administrator determines that the information should not be disclosed; or

- (2) the information lawfully has been published or has been officially made available to the public; or
- (3) disclosure of the information is required by statute; or
- (4) the designation made by the submitter under subsection 7.11.3 appears obviously frivolous – except that, in such a case, the PARP Administrator shall, within ten (10) working days prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

7.11.9 Notice of PARP Lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the PARP Administrator shall promptly notify the submitter

7.11.10 Corresponding notice to requesters. Whenever the PARP Administrator provides a submitter with notice and an opportunity to object to disclosure under subsection 7.11.7 of this section, the PARP Administrator shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the PARP Administrator shall notify the requester(s).

7.12 In responding to a request for records, WMATA shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of WMATA's automated information systems. For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

7.13 In making any record available, WMATA shall provide the records in any form or format requested if the record is readily reproducible in that form or format. WMATA shall make reasonable efforts to maintain its records in forms or formats that are reproducible.

8.0 FEES:

8.1 Fees are charged for record search, review, and duplication (and any necessary redaction) when records are sought for commercial use. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the document must be disclosed and for the purposes of withholding any portions exempt from disclosure. Review costs will not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request.

8.2 Fees shall be limited to the charges for copying when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media.

8.3 For any request not described in 8.1 and 8.2, fees shall be limited to the cost of record search and duplication.

- 8.4. WMATA will furnish records without charge or at a charge reduced below the fees established in 8.1 - 8.3 if WMATA determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of WMATA and is not primarily in the commercial interest of the requester
- 8.5 Fees will not be charged for staff time of less than two (2) hours or for minor duplication (duplication of one hundred pages or less) or when the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.
- 8.6 Requests for waiver or reduction fees shall be in writing. The PARP Administrator shall determine whether fees shall be reduced or waived in accordance with 8.1 through 8.5 and shall provide the requester a written response to a waiver request prior to ~~WMATA~~ incurring costs to respond to the request. If only some of the requested records satisfy the requirements for a waiver or reduction of fees, a waiver or reduction may be granted for those qualifying records. If a request for waiver is denied, the requester must confirm an agreement to pay fees ~~prior to~~ before WMATA will incurring costs to respond to the request.
- 8.7 For a ~~copies~~ black and white duplication produced by photocopy machine of a record (only one copy shall be supplied) or by scanning a record, the fee shall be ~~twenty-five (25)~~ fifteen (15) cents per page. For copies produced by computer, such as tapes, floppy disc, or printouts, direct costs, including operator time of producing the copy, shall be assessed by the Office of Information Technology and Services ("ITSV"). Direct costs of the duplication shall be assessed for other forms of duplication.
- 8.8 Direct costs also include (1) the search time to locate a record, (2) the examination of a record to determine whether any portion of it is exempt from disclosure, (3) the processing of any record for disclosure, e.g., redacting the record, and (4) the time spent considering any formal objection to disclosure. Requesters will only be charged once for a review to determine whether an exemption applies to a particular record. Subsequent reviews of the same record will not result in additional fees. Fees associated with staff time shall be at regular hourly rates, plus an additional 50 percent (which percent is subject to adjustment by the Office of Financial Management) to cover benefits. At its discretion, WMATA may provide special services such as certifying that records are true copies or sending them by other than ordinary mail. The direct costs of providing such services shall be charged to the requester.
- 8.9 Fees shall not be paid in advance of receipt or inspection of the records unless the requester has previously failed to pay fees in a timely fashion or the Authority has estimated that the fees will exceed \$250.00. Fees in excess of \$250 are due within 30 working days of the Authority's written decision, after which the request shall be deemed withdrawn. Fees of \$250 or less are due within 10 working days of the requester's receipt of documents. If a requestor fails to pay a fee after receiving requested documents, the requestor shall be required to pay a deposit of \$250 or the amount that is due from the requestor, which ever is greater, before the Authority is required to respond to any further request. Payments and deposits shall be made by certified check or money order made payable to the Washington

Metropolitan Area Transit Authority. The certified check or money order shall be sent to the PARP Administrator.

- 8.10 If WMATA reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, WMATA may aggregate those requests and charge the total aggregated fees. Multiple requests involving unrelated matters shall not be aggregated.

9.0 ADMINISTRATIVE APPEALS, EXHAUSTION, AND JUDICIAL REVIEW:

9.1 Administrative Appeals.

- 9.1.1 A requester may seek an administrative review of a denial of a request for records or denial of fee waiver by filing a written appeal of the denial with the Chief of Staff within thirty (30) working days of the date of the denial letter.
- 9.1.2. The date of receipt of an appeal shall be the date it is received by the Chief of Staff.
- 9.1.3 An Appeal Panel consisting of the Chief of Staff, or his/her designee, the General Counsel, or his/her designee, and the Assistant General Manager for the Official Custodian or his/her designee shall be responsible for reviewing appeals. The Panel shall inform the requester of its determination concerning the appeal within ~~twenty (20)~~ thirty (30) working days, ~~plus any extension authorized by subsection 7.10.1 above,~~ of its date of receipt.
- 9.1.4 If the Appeal Panel grants the appeal, the Chief of Staff, or his/her designee, shall inform the requester of the applicable conditions surrounding granting the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If the Appeal Panel grants only a portion of the appeal, it shall treat the portion not granted as a denial.
- 9.1.5 If the Appeal Panel denies the appeal, either in part or in whole, the Chief of Staff, or his/her designee, shall inform the requester of that decision and of the following:
- (1) the reasons for the denial;
 - (2) the name and title or position of each person responsible for denial of the appeal; and
 - (3) the right to judicial review
- 9.1.6 Any attorney assigned to the appeals process shall not have had any involvement with the initial denial of the request.

9.2. Exhaustion of Administrative remedies.

- 9.2.1 A requester must exhaust the administrative appeal process, before seeking judicial review of a denial of request for records or a fee waiver.
- 9.2.2 A requester has exhausted his administrative remedies if his request for records or for a fee waiver has been denied and if that denial has been upheld on administrative appeal.
- 9.2.3 ~~Any person making A requester to WMATA for records shall be deemed to have exhausted his administrative remedies with respect to such request if WMATA fails to comply with the applicable time limit provisions of this section.~~ issue a decision on a request within twenty (20) working days or

within the time authorized by any extension pursuant to 7.10.1, or if WMATA fails to issue a decision on an administrative appeal within thirty (30) working days.

9.3 Judicial Review:

- 9.3.1 The requester may bring a civil action only for injunctive relief or a declaratory judgment. Nothing in this Policy P/I shall be construed to authorize any civil action for damages.
- 9.3.2 In accordance with Section 81 of the WMATA Compact, an action to enforce this policy instruction may be brought in any state or federal court of the United States located in the District of Columbia, Maryland, or Virginia without regard to the amount in controversy. Such action shall be filed within two years of the date of exhaustion under section 9.2 on which the cause of action arises, except that where WMATA has materially and willfully misrepresented any information required under this policy to be disclosed to an individual and the information so misrepresented is material to WMATA's disclosure obligation under this Policy ~~the establishment of liability under this policy~~, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.
- 9.3.3 The Court may enjoin WMATA from withholding ~~agency~~ records and to order the production of any ~~agency~~ records improperly withheld. ~~from the complainant~~. In such a case, the Court shall determine the matter de novo, and may examine the contents of ~~such~~ WMATA records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions or exclusions set forth in Section 6, and the burden is on WMATA to sustain its action. In addition to any other matters to which a court accords substantial weight, the Court shall accord substantial weight to an affidavit of WMATA concerning WMATA's determination as to technical feasibility under section 7.12 and reproducibility under section 7.13 of this P/I.
- 9.3.4 The Court may assess against WMATA reasonable attorney fees and other litigation costs reasonably incurred in any case under section 9.3 of this policy in which the complainant substantially prevailed. Fees shall not be assessed in "Reverse FOIA" cases filed by Submitters. See 7.11.10.
- 9.3.5 If suit is filed, and if WMATA can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request, the Court may retain jurisdiction and allow WMATA additional time to complete its review of the records.
- (a) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless WMATA demonstrates reasonable progress in reducing its backlog of pending requests.

- (b) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause 7.10.1(b) after being given an opportunity to do so by WMATA shall be considered a factor in determining whether exceptional circumstances exist for the purposes of this subsection.

9.3.6 Whenever the Court orders the production of any WMATA records improperly withheld from the complainant and assesses against WMATA reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether WMATA personnel acted arbitrarily or capriciously with respect to the withholding, the Office of Auditor General shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Auditor General, after investigation and consideration of the evidence submitted, shall submit the findings and recommendation to the ~~Assistant~~ Deputy General Manager or equivalent of the Office or Department concerned and shall send copies of the findings and recommendations to the officer or employee or his/her representative. The ~~Assistant~~ Deputy General Manager or equivalent of the Department concerned shall take the corrective action that the Auditor General recommends or implement an alternative correction action with the approval of the Auditor General.

Where attorneys' fees are awarded against WMATA and the award was due to WMATA's delay or failure to respond to a request, the office/department(s) that is/are determined to be at fault, based on the investigation conducted by the Auditor General, shall bear the cost of the attorneys' fees award in addition to what ever sanction the Auditor General determines is appropriate.

9.3.7 In the event of noncompliance with the order of the court, the District Court may punish for civil contempt the responsible employee.

9.3.8 Nothing in this policy shall be construed to authorize a civil action by reason of any injury sustained as the result of the withholding of a record prior to the approval of this policy by the Board of Directors of WMATA.

10.0 DISCIPLINE:

Each officer, employee, and agent of WMATA is responsible for ensuring that he/she does not release records that are not releasable and for cooperating with the PARP Administrator and/or Official Custodian by taking all steps necessary to release documents releasable under this P/I in a timely manner. Any WMATA officer, employee, or agent who releases records other than in accordance with this P/I and/or who unduly delays or refuses to cooperate with necessary document release shall be subject to discipline up to and including dismissal from WMATA.

11.0 REPORTING REQUIREMENTS:

- 11.1 At the end of each quarter, the PARP Administrator shall submit to the General Manager/Chief Executive Officer (GM/CEO) a report that shall cover the preceding quarter and include:
- (a) the number of determinations made by WMATA to deny requests for records made to WMATA pursuant to the PARP and the reasons for such denial;
 - (b) the number of requests for records pending before WMATA as of the end of the preceding quarter, and the number of days that such requests had been pending before WMATA as of that date;
 - (c) the number of requests for records received by WMATA and the number of requests which WMATA processed;
 - (d) the median number of days taken by WMATA to process different types of requests; and
 - (e) the total amount of fees collected by WMATA for processing requests.
- 11.2 WMATA shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by WMATA, by other electronic means.
- 11.3 The GM/CEO shall inform the Board of Directors that such reports are available by electronic means.

12.0 APPLICABILITY:

This policy shall apply to requests for records received after this policy is adopted by the Board of Directors. Requests for records received before the date of adoption of this amended policy shall be governed by the Public Access to Records Policy adopted by the GM/CEO on April 17, 2000.

PROPOSED PRIVACY POLICY

1.0 POLICY

It is the policy of the Washington Metropolitan Area Transit Authority (“WMATA”) to protect the privacy of individuals who are the subjects of records maintained by WMATA in systems of records, by generally preventing the disclosure of records without the permission of the person who is the subject of the record and by providing individuals: access to their information contained in WMATA systems of records; an accounting of disclosures; and an opportunity to request amendment of those records.

2.0 PURPOSE

WMATA, in the regular course of its business, receives information about individual customers, employees and members of the public. Some of the information, if released, could harm these people and could violate their privacy. This P/I establishes policy and provides guidance on restricting access to records relating to individuals, guarantees the person who is the subject of a record access to the record and establishes a procedure to correct any misstatements of fact contained in a record.

3.0 SCOPE

This P/I establishes a means to regulate the collection, use and safeguarding of personal data. It applies to information in systems of records and is intended to protect individual privacy by establishing rules regarding the collection and use of data, establishing rights for the data subject and providing for penalties for violations and judicial review of WMATA decisions.

4.0 DEFINITIONS

- 4.1 “Day” does not include Saturday, Sunday or a legal holiday.
- 4.2 "Maintain" includes maintain, collect, use, or disseminate.
- 4.3. “Personnel records” refers to documents contained in a system of records, such as the Official Personnel Files, medical files, retirement files, maintained by the Office of Human Resources Management and Planning.
- 4.4 “Receipt” means receipt of a request by the Privacy Administrator, or the Director, HRMP in the case of personnel records.

- 4.5 "Record" means any item, collection, or grouping of information about an individual that is maintained by WMATA, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.
- 4.6 "Registered user" means an individual or entity who/that has registered their SmarTrip card with WMATA.
- 4.7 "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.
- 4.8 "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.
- 4.9 "System of records" means a group of any records under the control of WMATA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.
- 4.10 "WMATA Personnel" means any officer, employee, contractor or agent of WMATA .

5.0 RESPONSIBILITIES

- 5.1 Each contracting officer shall be responsible for assuring that the requirements of this P/I are included in any contract, where a contractor is responsible for creating or maintaining a system of records to accomplish a WMATA function.
- 5.2 The Director, Office of Human Resources Management and Planning (HRMP), shall be responsible for responding to requests relating to personnel records of former and current employees and for keeping a record of the actions taken in regard to requests regarding personnel records.
- 5.3 The Office of Marketing shall be responsible for assuring that a current copy of this Policy and that a copy of each written notice regarding systems of records are posted on WMATA's internet site.
- 5.4 The Official Custodian (Custodian) of each Department/Office shall be responsible for complying with the record keeping requirements of paragraph 7.1, involving circumstances where records are disclosed; for placement of statements of disagreement in individual files and for assuring that these are included with any disclosure of records in accordance with paragraph 7.4;

identifying the circumstances when a Privacy Notice must be used when individuals are asked to supply information in accordance with paragraph 7.6.2 and for drafting the proposed notice regarding routine uses, required by paragraph 7.6.3. In accordance with paragraph 7.6.5, the Custodians shall take reasonable steps to assure that records which are disclosed, except in the case of routine uses, are accurate and complete. For purposes of this P/I, the Responsible Official shall be considered an Official Custodian unless s/he has designated a subordinate as the Official Custodian and so notified the Privacy Administrator. An Official Custodian must meet the qualification requirements and evaluation provisions of Section 5.4(a) and (b) of the Public Access to Records Policy.

- 5.5 The Privacy Administrator (the Administrator) is the person responsible for administering this policy. He or she shall ensure timely response to requests for access to records; shall attempt to provide notice when records are obtained pursuant to compulsory legal process under paragraph 7.6.7; shall review the Privacy Notices drafted by Custodians as required by paragraph 7.6.4. and shall assure that the final notices are transmitted to the Office of Marketing to be posted on WMATA's website.
- 5.6. A Responsible Official is an Officer, Assistant General Manager, Chief Operating Officer, or head of an Independent Office who shall be responsible for the implementation of this P/I for his/her department/office, including appointing an Official Custodian. They are responsible for determining which personnel in their offices or departments must sign an Information Protection Statement. Responsible Officials shall designate and supervise Official Custodians of records for their respective departments or offices. Responsible Officials shall notify the Administrator of the name, phone number, facsimile number, and email address of the current Official Custodian for their respective departments or offices and shall update this information as necessary.
- 5.7 When WMATA provides by a contract for the operation by or on its behalf of a system of records to accomplish a WMATA function, WMATA shall, consistent with its authority, cause the requirements of this Policy Instruction to be applied to such system.

6.0 CONDITIONS OF DISCLOSURE

- 6.1 WMATA shall not disclose any record which is contained in a system of records by any means of communication to any person, or to another government agency, except pursuant to a written request by the individual to whom the record pertains or with his or her prior written authorization unless disclosure of the record is:
 - (A) to WMATA personnel who have a need for the record in the performance of their duties, which need should be related to the purpose for which the

record is maintained;

(B) for a routine use as defined in paragraph 4.7 of this policy and described under paragraph 7.6.3 of this policy;

(C) to a ~~recipient~~ requester who has provided WMATA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(D) to an agency or an instrumentality of any federal, state or local entity with jurisdiction within the Transit Zone for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to WMATA specifying the particular portion desired and the law enforcement activity for which the record is sought, and to any federal, state or local law enforcement agency if the head of the agency establishes to WMATA that the information is required in the course of an investigation where time is of the essence in preserving and protecting human life and/or public safety;

(E) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual, but if the information being disclosed contains protected health information as defined by WMATA's health information privacy policies, disclosure shall be pursuant to those policies;

(F) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(G) to the U.S. Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office, or to the Federal Transit Administration in the course of its audit activities;

(H) pursuant to the order of a court of competent jurisdiction;

(I) required under WMATA's Public Access to Records Policy (PARP)

6.2 WMATA personnel shall not disclose or permit others to disclose to anyone outside the Authority information obtained through their official position or work with the Authority and not generally available to the public, except in the performance of their official duties or in connection with judicial proceedings, and in accordance with the provisions of this P/I and other relevant WMATA rules and regulations. Any applicable statute, regulation or WMATA policy providing greater privacy protection controls over this policy. Departments

and Offices shall require their employees who have particularized access to sensitive information on either a recurring or single time basis, to sign an Information Protection Statement by which they agree to comply with the requirements of this P/I, a sample of which is attached to this P/I. Each Responsible Official shall be responsible for identifying the employees who because of their access to information shall be required to sign a statement. A copy of the signed statement shall be maintained by the Custodian; the original shall be filed in the Official Personnel File.

7.0 PROCEDURES

7.1 Accounting of certain disclosures

7.1.1 Except for disclosures made under paragraph 6.1 (A), with respect to each system of records under its control, WMATA shall keep an accurate accounting of:

(A) the date, nature, and purpose of each disclosure of a record to any person or agency made under paragraph (B) below;

(B) the name and address of the person or agency to whom the disclosure is made.

7.1.2 WMATA shall retain the accounting made under paragraph 7.1.1 for at least five years after the disclosure for which the accounting is made or however long the record is ordinarily retained, whichever is longer.

7.1.3 Except for disclosures made under paragraph 6.1(D), WMATA shall make the accounting made under paragraph 7.1.1 of this P/I available to the individual named in the record at his request.

7.1.4 WMATA shall inform any person or agency to whom records have been disclosed of any correction or notation of dispute made by the WMATA in accordance with paragraph 7.4 of this P/I.

7.2 Access to records

7.2.1 Upon request by any individual to access his record or to amend any information pertaining to him that is contained in a system of records, WMATA shall permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof.

7.2.2 A request shall be made in writing or by e-mail and be directed to the Privacy Administrator, except for personnel records relating to former and current employees. In the case of personnel records relating to

former and current employees, the request shall be directed to the Director, Office of Human Resources Management and Planning (HRMP) or designee. The Administrator, or the Director, HRMP in the case of employee records, shall acknowledge receipt of a request within 10 days of receipt and shall respond to the request within 30 days after the date the acknowledgment is mailed. If WMATA refuses to disclose the record, it shall inform the individual of the reason for the refusal and the procedure for judicial review. No record shall be disclosed unless the requestor demonstrates to WMATA that he or she is who he or she claims to be. If the requester appears in person, he or she must provide an identifying document containing a photograph issued by a recognized governmental organization. If the request is made by mail, the requester must provide his or her full name, current address, date and place of birth, ~~social security number~~, and must have the request notarized.

- 7.2.3 In the case of medical records regarding former or current employees, including psychological records, the decision to release directly to the individual or to withhold direct release shall be made by a medical practitioner designated by the director, HRMP. If the decision is that direct release would do harm to the individual who is requesting access, release through the individual's chosen medical practitioner will be recommended. Final decision lies with the Director, HRMP. Requests for access to protected health information shall be responded to in accordance with WMATA's Health Information Privacy policies.

7.3 Amendment of Records

- 7.3.1 An individual may request amendment of a record pertaining to himself. The request must be in writing, must be addressed to the Administrator or to the Director, HRMP in the case of personnel records, and must pertain solely to issues of fact. The request must contain any and all documentary evidence supporting the request for amendment.
- 7.3.2 Not later than 10 days after the date of receipt of such request, the Administrator, or the Director, HRMP in the case of personnel records, shall acknowledge such receipt.
- 7.3.3 In the case of personnel records, the Director, HRMP shall determine whether the record shall be amended. In the case of other records, the Administrator shall transmit the request to the Official Custodian who shall make the determination whether to amend the record.
- 7.3.4 Not later than 40 days after the date of receipt, the Administrator or the Director, HRMP, in the case of personnel records shall either:

(A) make any correction of any portion thereof which the individual believes is not accurate, relevant, or complete and shall provide notice of the correction to the individual; or

(B) inform the individual of the refusal to amend the record in accordance with the request, the reason for the refusal and the procedures for judicial review.

7.4 Statement of Disagreement

If WMATA's decision is to refuse to amend a record, the individual may file with WMATA a concise statement setting forth the reasons for his disagreement with the WMATA's refusal. In any disclosure by WMATA, containing information about which the individual has filed a statement of disagreement, WMATA shall clearly note any portion of the record which is disputed and provide copies of the statement, and at its discretion, a concise statement of the reasons for not making the requested amendment.

7.5 Administrative Appeals

7.5.1 An individual may seek administrative review of a denial of access to his or her records under section 7.2 of this P/I, or a refusal to amend records following a determination under section 7.3.4 of this P/I by filing a written appeal of the action with the Chief of Staff within thirty (30) days of the date of the denial letter.

7.5.2. The date of receipt of an appeal shall be the date it is received by the Chief of Staff.

7.5.3 An appeal panel consisting of the Chief of Staff, or his/her designee, the General Counsel, or his/her designee, and the Deputy/Assistant General Manager or Office Director to whom the custodian of the records at issue reports or his/her designee shall be responsible for reviewing appeals. The Panel shall inform the individual of its determination concerning the appeal within twenty (20) days of receipt.

7.5.4 If the appeal panel grants the appeal, the Chief of Staff, or his/her designee, shall inform the requester of the applicable conditions surrounding granting the request (e.g., amendment of record) and the approximate date upon which compliance will be effected. If the appeal panel grants only a portion of the appeal, it shall treat the portion not granted as a denial.

7.5.5. If the appeal panel denies the appeal, either in part or in whole, the Chief of Staff, or his/her designee, shall inform the requester of that decision and of the following:

(A) The reasons for the denial;

(B) The name and title or position of each person responsible for denial of the appeal; and

(C) The right to judicial review

7.5.6 Any attorney assigned to the appeals process shall not have had any involvement with the initial denial of the request.

7.5.7 An individual must exhaust this administrative appeal process prior to seeking judicial review of a denial of access or refusal to amend.

7.6 Principles and Routine Uses

7.6.1 WMATA shall maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose in accordance with the WMATA Compact.

7.6.2 WMATA shall state on the form that it uses to collect the information for a system of records or on a separate form that can be retained by the individual:

(A) whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses of the information;

(D) the effects, if any, of not providing all or any part of the requested information;

(E) that unless an exception applies, WMATA shall obtain the individual's authorization before disclosing for a purpose other than a routine use described in "C" above or for statistical purposes in accordance with paragraph 6.1(C).

7.6.3 Each department or office or equivalent that maintains a system of records shall provide the Administrator with a written notice stating:

(A) the name and location of the system;

(B) the categories of individuals for whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices regarding storage, retrieval, access controls, retention, and disposal of the records, provided these are consistent with WMATA's records retention policies;

(F) the title and business address of the official who is responsible for the system of records;

(G) WMATA's procedures whereby an individual can be notified how to gain access to any record pertaining to him contained in the system of records, and how to contest its content; and

(H) the categories of sources of records in the system.

7.6.4 A copy of each written notice regarding systems of records described in paragraph 7.6.3 shall be submitted to the Administrator for his or her review, after which it shall be posted on WMATA's internet site. It shall also be made available for public review upon request.

7.6.5 Prior to disseminating any record about an individual, unless the dissemination is made pursuant to a routine use or for a statistical purpose pursuant to paragraph 6.1(C), WMATA shall make reasonable efforts to assure that such records are accurate and complete.

7.6.6 WMATA shall maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute, by the individual about whom the record is maintained, or pertinent to and within the scope of an authorized law enforcement activity.

7.6.7 WMATA shall make reasonable efforts to serve notice on an individual when any record about an individual is made available to any person under compulsory legal process, provided such process has become a matter of public record.

7.6.8 WMATA shall establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is maintained.

7.6.9 An individual's name and address may not be sold or rented by WMATA unless such action is specifically authorized by law. This

provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

7.6.10 A current copy of this P/I shall be posted on WMATA's internet site.

7.7 **Coordination with Public Access to Records Policy and with Collective Bargaining Agreements**

7.7.1 WMATA shall not rely on any exemption contained in the Public Access to Records Policy to withhold from an individual any record about the individual which is otherwise accessible under the provisions of this Policy Instruction.

7.7.2 WMATA shall not rely on any exemption in this P/I to withhold from an individual any record which is otherwise accessible to such individual under the provisions of the Public Access to Records Policy.

7.7.3 In the event that there is a conflict between the provisions of this Policy and the provisions of any collective bargaining agreement, the provisions of the collective bargaining agreement shall govern.

8.0 FEES, JUDICIAL REVIEW, AND DISCIPLINE

8.1 Fees for copying records that are disclosed shall be assessed in accordance with the WMATA Public Access to Records Policy duplication rates in effect at the time the records are provided. No fee will be charged for searching for and reviewing the record. No fee will be charged for documents furnished in response to a request from: an employee or former employee of WMATA for his or her personnel records; a member of Congress for official use; a domestic governmental agency; or a court.

8.2 Whenever WMATA:

(A) makes a determination under paragraph 7.3.4 of this P/I not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that paragraph; or

(B) refuses to grant an individual request under paragraph 7.2 of this P/I; or

(C) fails to comply with any other provision of this P/I in such a way as to have an adverse effect on an individual;

the individual may bring a civil action, only for injunctive relief or a declaratory judgment, and only after exhausting the administrative review process in section 7.5 of this P/I. Nothing in this P/I shall be construed to authorize any civil action for damages.

- 8.3. In any suit brought under the provisions of paragraph the court shall determine the matter *de novo*. The burden is on WMATA to sustain its action. The court may assess against WMATA reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph where the court determines both that WMATA acted willfully and that the complainant has substantially prevailed.
- 8.4. In accordance with Section 81 of the Compact, an action to enforce this P/I may be brought in any state or federal court of the United States located in the District of Columbia, Maryland or Virginia without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where WMATA has materially and willfully misrepresented any information required under this P/I to be disclosed to an individual and the information so misrepresented is material to establishment of the liability under this P/I, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.
- 8.5 Any WMATA officer, employee, or agent who wrongfully and willfully denies a person access to a record about which he or she is the subject or who willfully releases records other than in accordance with this P/I or who unduly delays or refuses to cooperate with locating records shall be subject to discipline up to and including dismissal from WMATA. Any employee who fails to complete an Information Disclosure Form, as required by a Responsible Official, shall be subject to discipline.

9.0 EXEMPTIONS

- 9.1 Nothing in this Policy Instruction shall allow an individual access to:
 - (A) any information compiled in reasonable anticipation of a civil action or proceeding or where disclosure would violate applicable federal law;
 - (B) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment or contracts, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to WMATA; or
 - (C) testing or examination material used solely to determine individual qualifications for appointment or promotion in employment with WMATA, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.
- 9.2 WMATA may not share any information under a matching program, by which automated systems of records are compared, unless the requesting (i.e. recipient) agency enters into an agreement with WMATA pursuant to 5 U.S.C. § 552a(o)(1) or in the case of a state agency, under analogous state statutory authority.

- 9.3 No SmarTrip information, including financial transaction information, may be released by WMATA, unless the request is made (A) pursuant to a court order or (B) pursuant to a request from a law enforcement official pursuant to paragraph 6.1(D) herein or (C) by the registered user of the SmarTrip information/data upon proof of identity, in accordance with paragraph 7.2.2, for release only to that user. SmarTrip information will not be released to a third-party even with the written consent of the registered user, except in accordance with subsections (A) and (B) above.
- 9.4 Records maintained by the Metro Transit Police and which consist of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, shall be exempt except that paragraphs 6.1; 7.5.2; and 7.5.3 apply to records covered by this paragraph.
- 9.5 The Responsible Official shall provide the Privacy Administrator with a statement explaining why any system of records is deemed exempt.

INFORMATION PROTECTION STATEMENT

The AGM or equivalent or Officer Director to whom the undersigned reports, has determined that the undersigned has been granted access to sensitive or confidential information. Such information may be in an oral, written, electronic or computer generated format. By signing this document, I acknowledge that I am familiar with the data and information protection policies contained in the following WMATA Policy Instructions: 7.10 (particularly paragraphs 6.01.05 and 6.01.06)(Standards of Conduct); 9.2 (PARP), 9.3 (Privacy) and 15.1 (information security).

I recognize that In the performance of my duties and responsibilities, I must exercise the highest degree of care to protect, safeguard and preserve the integrity and confidentiality of all materials and information to which I have been granted access. I understand that during my employment or thereafter, I may not divulge, discuss, transmit, copy or otherwise distribute any information or document that I have obtained as a result of my employment with WMATA except in connection with my official duties and in accordance with the relevant Policy Instructions. I understand that failure to comply with the confidentiality and nondisclosure requirements as stated herein and as contained in the referenced policy instructions will result in disciplinary action, up to and including termination of employment.

I, _____, acknowledge that I have read and understood the Information Protection Statement.

signature

date

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
1	<p>WMATA should include in proposed section 1.0 a statement of WMATA’s intent that encourages the release of otherwise exempt records if there would be no foreseeable harm.</p> <p>WMATA should include that WMATA intends to release otherwise exempt records if there is no foreseeable harm.</p>	<p>Reporters Committee for Freedom of the Press</p> <p>Metroriders.org</p>	1.0		<p>Reject. But added language that with respect to WMATA’s right to claim exemptions, we will be guided by federal practice in determining when to grant waiver, which includes the “foreseeable harm” standard.</p>
2	<p>WMATA should add “to the greatest extent possible” after “for inspection and copying” and eliminate the proposed addition that “this policy shall not be construed... to satisfy requests.”</p>	<p>Reporters Committee for Freedom of the Press</p>	1.0		<p>Accept.</p>
3	<p>The “No records creation” provision could create ambiguity among WMATA personnel as to how responsive they should be to public inquiry. Typical FOIA policy statements make it clear to agency personnel that information will be provided to the greatest extent possible and may be held only if an exemption applies.</p>	<p>Reporters Committee for Freedom of the Press</p>	1.0		<p>Accept.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
4	<p>Electronic searches should be specified in Section 1.0.</p> <p>The policy should specify that electronic files/databases can be searched.</p>	Metroriders.org	1.0		Accept. <u>See also</u> , Section 4.5 (now 4.7).
5	Change “in WMATA’s control at the time of the request” to “in WMATA’s control at the time of response”	Reporters Committee for Freedom of the Press	3.0		Accept.
6	Expand to the greatest extent possible the scope of materials that can be provided by staff to requesters without resort to the PARP process.	Metroriders.org	3.0		Accept. But placed in Section 1.0.
7	Eliminate “prevent a clearly unwarranted invasion of personal privacy.”	Reporters Committee for Freedom of the Press	3.0		Reject. We want to emphasize that the privacy of individuals is of paramount importance.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
8	<p>The last sentence of this section should be deleted. The statement is clear when dealing with paper documents but can be problematic when dealing with electronic documents.</p> <p>Add: Requests for compilation(s) of electronic records should be treated as requests for “existing records” if the request can be filled without imposing significant operational burden on WMATA.</p>	<p>Delaware, DC, MD, VA Press Association Metroriders.org</p>	<p>4.5 (Now 4.7)</p>		<p>Accept with modification. We have renumbered this section 4.7. We did not delete the sentence as requested, but we added clarifying language regarding electronic records, specifying that when providing an electronic record in different format is not financially or operationally burdensome, such formats will be included in the definition of “records.”</p>
9	<p>Add language to clarify that financial burden will be removed if the requester agrees to pay WMATA’s costs under Section 8.0.</p>	<p>Delaware, DC, MD, VA Press Association [Final Comment, April 2005]</p>	<p>4.5 (Now 4.7)</p>		<p>Accept but no change necessary. We agree that there is no financial burden once requester agrees to pay.</p>
10	<p>No reason to keep electronic records secret as “working papers” because they are electronic. The last sentence works as a detriment as providing work that already exists or that is easily compiled would not create a burden on the agency.</p>	<p>Reporters Committee for Freedom of the Press</p>	<p>4.5 (Now 4.7)</p>		<p>Accept with clarification. Comment assumes incorrectly that we will treat all electronic records as work papers. Clarified language to indicate that only electronic records that are created solely as work papers for personal use will be considered work papers.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
11	The term records should be more broadly defined. The policy does not explicitly state that electronic or audiovisual records are included in the definition of records.	Metroriders.org	4.5 (Now 4.7)		Accept with clarification that records stored by computer are electronic records.
12	The last sentence of Section 4.5 is unclear and ambiguous. The policy should not exclude work files created in association with processing a request. While the scope of a request can exclude records created after the submission date of that request, it should not permanently and categorically bar future requests for subsequent records that may ultimately be found to be releaseable.	Metroriders.org	4.5 (Now 4.7)		Accept but no change necessary. Both the PARP and the Amended PARP would cover records created to respond to a previous request and would allow subsequent requests for records on the same topic to reach records created to respond to a previous request if no exemption applies.
13	The definition of requester should not exclude requests from union representatives acting in their official capacities.	Metroriders.org	4.6		Accept.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
14	The portion of this section that refers to frequently-requested documents should instead refer to records, not just documents. This comment also extends to other instances where the narrow term “documents” is used in lieu of the broader term “records”.	Metroriders.org	5.1		Accept.
15	Any records frequently requested or likely to be the subject of future requests should be posted. This may include reports, audio-visual materials such as photos or databases. Under FOIA, agencies are now obliged to post records of presumptive public interest on the agency’s website. For example opinions, orders, staff manuals, or statements of policy of agencies. WMATA’s policy should encourage non-PARP distribution (for example press releases, briefings, audit reports, routine operating statistics and studies and findings presented to the WMATA Board in open meeting.	Metroriders.org	5.1, 5.4		Accept. Inserted language in sections 5.1 and 5.4.
16	This section should state records requested 3 or more times will be deemed “frequently requested.”	Metroriders.org	5.1		Reject. The determination of what is frequent will change depending on the type of record.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
17	The inclusion of frequently requested records on WMATA's web page should supplement and not constrain whether an individual requester can obtain immediate and less formal access to other readily available WMATA documents and records from WMATA staff.	Metroriders.org	5.1, 5.4		Accept but no change necessary.
18	Too much leeway for withholding information for safety reasons is granted to the AGM of the System Safety and Risk Protection Department.	Reporters Committee for Freedom of the Press	5.5		Accept. Clarified that AGM of Safety identifies records that have been identified CII or SSI or that otherwise qualify for PARP Exemption 1.
19	<p>Instead of stating that the P/I “does not apply” to exempt records, state that “records and/or information are exempt from disclosure” under the P/I.</p> <p>The revision makes it clear that information that falls within the subsections of Section 6 are exempt from mandatory disclosure under the Policy.</p>	Delaware, DC, MD, VA Press Association	6.1		Accept.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
20	<p>Add bolded info.: Critical Infrastructure Information under the Patriot Act or Sensitive Security Information under the Transportation Security Act.</p> <p>Delete: and/or are records that, if released, could compromise the safety ... and/or security of the metro system and/or its customers.</p> <p>There is a need to protect public safety or security but the proposed exemption goes too far. Anything could result in a safety problem.</p>	Delaware, DC, MD, VA Press Association	6.1.1		<p>Accept. Clarified definition of CII and SSI.</p> <p>Modify exemption 6.1.1 in response to suggestion that it went too far so as to give clear guidance on what would be considered public safety; i.e. protection of rolling stock, infrastructure, customers and employees.</p>
21	<p>Critical Infrastructure Info. (CII), defined in the Homeland Security Act, is only protected when it is voluntarily submitted to the Dept. of Homeland Security (DHS) which may then share it with other entities. No info. submitted directly to WMATA from anyone else is CII although other exemptions may protect it. (See: http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004-3641). The AGM may have a role in keeping CII rec'd from DHS confidential, but he cannot make the designations himself.</p>	Reporters Committee for Freedom of the Press	6.1.1		<p>Accept. <u>See</u> previous recommendation.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
22	The terms CII and SSI should be clearly defined.	Metroriders.org	6.1.1		Accept. We have clarified definitions of CII and SSI.
23	Sensitive security Information is information that the Transportation Security Administration(TSA) in the DHS has determined is protected in order to ensure transportation security. If the TSA has not determined that the information is protected, it is not Sensitive Security Information.	Reporters Committee for Freedom of the Press	6.1.1		Accept. We have defined SSI in accordance with federal regulations.
24	The proposal would exempt any other records that “could compromise” safety or security. But almost anything could compromise safety or security under some circumstances. WMATA should delete this last portion of section 6.1.1.	ACLU Reporters Committee for Freedom of the Press	6.1.1		Reject. We need ability to protect our system, rolling stock, customers and employees, but we restricted the language to allow us to offer this protection and no more. <u>But see</u> following recommendation.
25	This section remains too broad, because many WMATA records “could compromise the security of he Metrorail and bus systems’ infrastructure and/or rolling stock...and/or physical safety of its customers and/or employees.” (emphasis added) WMATA should revise the language by substituting “would” for “could.”	Delaware, DC, MD, VA Press Association [Final Comment, April 2005]	6.1.1		Accept.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
26	The PARP should not exempt “internal personnel rules and practices records” unless release would circumvent WMATA procedures or rules.	Metroriders.org	6.1.2		Reject. PARP 6.1.2 tracks FOIA exemption 2. FOIA exemption 2 case law accounts for circumvention.
27	Re-word this exemption to read: “specifically exempted from disclosure by statute, other than open records acts, provided that...” WMATA did not intend to incorporate all other exemptions in the open records statutes of the jurisdictions it comprises.	Reporters Committee for Freedom of the Press DE, DC, MD VA Press Association	6.1.3		Accept with modification. The PARP did not intend to incorporate the exemptions from open records acts. Instead of the suggested revision, adding “other than the open records statutes of WMATA’s signatories” to 6.1.3 better defines which open records acts are at issue.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
28	<p>The proposed exemption covers business information concerning WMATA, the federal exemption covers only data obtained from a person. The difference is crucial. By protecting WMATA information this exemption would enable WMATA to withhold a great deal of operations information.</p> <p>Federal and DC FOIA laws exempt such information only when provided by others; we suggest the same limitation here.</p>	<p>Delaware, DC, MD, VA Press Association</p> <p>ACLU</p> <p>Reporters Committee for Freedom of the Press</p>	6.1.4		<p>Accept in order to make PARP 6.1.4 identical to FOIA exemption 4. As proposed for public comment, PARP 6.1.4 added two types of records not exempt under FOIA exemption 4: business information generated by WMATA and employee information. These records were more likely to be redacted under PARP 6.1.4 than they were under FOIA exemptions. Government-generated information is sometimes exempt under FOIA exemption 5 via the deliberative process or qualified commercial privileges. Employee personal information, but not all public employee information, is withheld from release under FOIA exemption 6. PARP 6.1.4 proposed additional protections for these records. These comments recommended that WMATA adopt FOIA exemption 4 without these additional protections. Staff agrees, finding that fully adopting FOIA exemption 4 in PARP 6.1.4 meets WMATA's goals of transparency and alignment with FOIA practice.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
29	Because confidential is not defined, this provision could easily be used to withhold all commercial and financial information about WMATA that someone prefers to keep confidential.	ACLU Reporters Committee for Freedom of the Press	6.1.4		Accept by fully adopting FOIA exemption 4, as described in previous recommendation. By removing the reference in proposed PARP 6.1.4 to commercial and financial information concerning WMATA, revised 6.1.4 accepts the comment, removes the additional protection for WMATA-generated business information and aligns PARP 6.1.4 with FOIA exemption 4.
30	The word “routinely” should be eliminated. It does not appear in the federal exemption similar to this.	ACLU Reporters Committee for Freedom of the Press Delaware, DC, MD, VA Press Association	6.1.5		Accept by striking “routinely” and other terms not present in FOIA exemption 5.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
31	<p>This exemption should not apply to accident and safety reports that are of great public interest. An exception to the exemption should be so noted: this section does not apply to accident and safety reports.</p>	<p>Reporters Committee for Freedom of the Press</p> <p>Delaware, DC, MD, VA Press Association</p>	6.1.6		<p>Reject. The comments propose a deviation from FOIA exemption 6 that would result in releasing employee and customer personal information. Accident and safety reports often include personal information such as home addresses, home phones and ages. Excepting these records from PARP 6.1.6 would allow release of this personal information. The same personal information is redacted from comparable records under FOIA exemption 6.</p>
32	<p>As drafted, the policy would appear to exempt all SmarTrip information. We suggest limiting the exemption to information about individual customers' SmarTrip accounts.</p> <p>Add bolded info.: All SmarTrip information about customers that is identifiable personal information ... made</p> <p>Delete: Section 3 – for release only to that user, Section 3(b) – SmarTrip information will not be released ... (2) of this subsection.</p>	<p>ACLU</p> <p>Electronic Privacy Information Center (EPIC)</p> <p>Reporters Committee for Freedom of the Press</p> <p>Delaware, DC, MD, VA Press Association</p>	6.1.8		<p>Accept. Draft language inserted that specifies that the SmarTrip records covered are records that are personally identifiable to customers.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
33	This section should contain an exception to allow the release of aggregate statistics of SmarTrip usage by a current WMATA Director with the written authorization of that Director.	Metroriders.org	6.1.8, 6.1.8 (3) (b)		Accept. New language limits exemption to SmarTrip information that is identifiable personal information.
34	Add bolded info.: All personally identifiable financial information.	Delaware, DC, MD, VA Press Association	6.1.9		Accept suggestion to limit exemption to personally identifiable information, thus allowing release of completely de-identified financial information. The revision accomplishes both the goal of offering the highest possible protection to personal financial information and the goal of transparency for WMATA operations.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
35	<p>The privacy exemption would protect the info. here while allowing a balance of public interest and privacy intrusion to protect info. that truly is in need of protection. Section 3(a) demands privacy even when the customer does not, serves no useful purpose.</p> <p>Delete: section 3(a)</p>	<p>Reporters Committee for Freedom of the Press</p> <p>Delaware, DC, MD, VA Press Association</p>	6.1.9		<p>Reject. Section 3(a) serves WMATA’s goal of protecting customer financial information by allowing release to third-parties only in response to a court order or to law enforcement officials under limited circumstances. Without 3(a), there could be unauthorized releases of customer financial information. Section 3(a) ensures customer privacy by prohibiting release of customer financial information to third parties in response to an authorization. The minor inconvenience that may be created by requiring release only to the individual owner of the financial information is outweighed by the benefit of additional safeguards for customer financial information.</p>
36	<p>Redactions should be “blacked out,” “outlined,” or blank and surrounded by an outline indicating the removed portions, rather than “whited out”, or blank for clarity.</p>	Metroriders.org	6.2		<p>Reject. The PARP’s silence as to any particular redaction method allows WMATA to adopt the best method(s) available for each request. In addition, the suggestion is a deviation from FOIA; as proposed, PARP 6.2 tracks FOIA.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
37	<p>Eliminate this section. Exemption 6.1.7 is adequate for protecting these records.</p> <p>WMATA may employ a “Glomar” response in extreme situations. The Federal government has treated language such as the draft language here as a license to actually deny that records exist when they do. WMATA should not follow the Federal government’s poor example in granting itself a license to lie about the existence of records.</p>	Reporters Committee for Freedom of the Press	6.3.1		<p>Reject. PARP 6.3.1 tracks FOIA exclusions, which preserve law enforcement investigations and protect sources. PARP 6.3.1 has been revised, however, to make clear that it represents an exclusion from PARP. In the “Glomar” response referenced by the commenter, the government neither confirms nor denies the existence of the requested records. Through experience defending these responses, however, the federal government discovered that even a Glomar response could reveal the pendency of an investigation or the existence of a confidential source. Therefore, Congress added these exclusions. In the circumstances described in FOIA, and replicated in PARP 6.3.1, the government can deny that records exist when they in fact do exist. PARP 1.0 clarifies WMATA’s policy to follow FOIA practice.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
38	The section that discusses release of records to “less than the public at large,” is unclear and should be clarified or deleted. While records about an individual released to that individual may be restricted to other requesters, this clause appears to refer to a different situation.	Metroriders.org	6.4		Accept. Delete proposed PARP 6.4 because it is vague and potentially inconsistent with FOIA. PARP 6.4 was meant to relate the FOIA principle that while exemptions can be claimed after limited release of a records, wide release and broad dissemination can waive the government’s right to claim exemption. By requiring that limits of disclosure be indicated to the requester, however, PARP 6.4 potentially restricted WMATA’s ability to claim exemption after limited release to only those situations where the limits were disclosed at the time of release. This limitation is inconsistent with FOIA. Thus, the policy statement that WMATA will follow FOIA practice in PARP 1.0 is more accurate that PARP in 6.4.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
39	<p>If records and/or information are exempt under Section 6 of this policy, WMATA nonetheless can, in its discretion, disclose the records and/or information, upon finding that there is an overriding public interest in disclosure, unless such disclosure is prohibited by law.</p> <p>Under Federal FOIA records can be released in the discretion of the custodian.</p>	Delaware, DC, MD, VA Press Association	6.6 (proposed new section)		<p>Reject. We agree with commenter that WMATA can waive certain exemptions as is done under FOIA. WMATA already follows FOIA principles and federal practice to waive, in appropriate circumstances, those exemptions protecting the rights and privileges of the Authority, but not those exemptions protecting the rights of third-parties including customers. As this is an evolving area of law, tending to increase openness, WMATA’s goal of transparency is best served by remaining flexible and adopting federal practices as they are developed. The revised statement of policy in PARP 1.0—including the intent to follow FOIA practice to the greatest extent possible—provides the needed flexibility to adopt new practices.</p>
40	Requesters should be able to submit a written request in person at WMATA’s Office of General Counsel.	Metroriders.org	7.1		<p>Reject. Imposition on security too burdensome compared to the cost of a stamp, fax, or email.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
41	<p>The policy should state that a request for records shall be considered an agreement by the requester to pay up to \$250 in fees; if the anticipated fees would be larger than that, WMATA should communicate with the requester and obtain an explicit agreement to pay the estimated fees.</p> <p>Metroriders.org suggests \$50.00.</p> <p>Reporters Committee suggests \$25.00</p>	<p>ACLU</p> <p>Metroriders.org</p> <p>Reporters Committee for Freedom of the Press</p>	7.4		<p>Accept, by inserting new sentence, “A requester may specify in writing that he wishes to be notified in advance if the fees are expected to exceed \$50.”</p> <p>Not unreasonable because we give requesters the first two hours of staff time and 100 pages of copying free of charge.</p>
42	<p>Add “as is possible” in the sentence reading “Specific Information about each record that is being requested should include [as is possible]...”</p>	<p>Reporters Committee for Freedom of the Press</p>	7.5		<p>Reject. Existing language provides adequate flexibility.</p>
43	<p>We do not understand why the language that encourages contacting the requester to help reformulate a request has been removed.</p>	<p>Reporters Committee for Freedom of the Press</p>	7.5		<p>Accept with clarification. <u>See</u> last sentence of proposed language, which captures intent of existing final sentence of 6.15, allowing requester to clarify request.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
44	<p>Too much identifying information is demanded of the requester.</p> <p>SSN disclosure requirements violate requester’s constitutional rights and may not be legal under the Federal Privacy Act. Demands would appear to intimidate or preclude persons who do not have SSNs assigned to them from making requests. SSN requirement should be deleted.</p>	<p>Reporters Committee for Freedom of the Press</p> <p>Fairfax County Privacy Council</p>	7.6		<p>Accept by deleting social security number requirement.</p>
45	<p>This section should include explicit wording that allows alternate forms of proof of death, such as a newspaper obituary or other relevant news coverage because death certificates are often difficult to obtain or may not be available promptly.</p>	Metroriders.org	7.7		<p>Accept. now accept newspaper obituary as proof of death, but limit release to those who can prove they have legal right to act on deceased’s behalf.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
46	<p>These sections do not require WMATA to produce the requested records within any specific time frame.</p> <p>Section 7.10.1 should be revised to provide that “within (20) working days of receipt of the request, the PARP Administrator shall produce the requested records to the extent that they are not exempt, and to the extent that they are exempt shall explain the denial of the request as provided in section 7.9(3).</p>	ACLU	7.10, 7.10.1, and 7.10.2		<p>Accept. Amend section 7.9.1 to require decision to include records to the extent feasible unless records are unwieldy, voluminous or difficult to retrieve.</p> <p>Note: That FOIA does not require inclusion of documents; in practice, WMATA tries to provide documents with decision as often as possible.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
47	<p>In “unusual circumstances,” this section allows WMATA to set an alternative time frame for WMATA to respond. Section 7.10.2 then provides that a person shall be deemed to have exhausted her administrative remedies “if WMATA fails to comply with the applicable time limit provisions,” but the applicable time limit provisions turn out to be whatever WMATA wants them to be if WMATA decides that there are unusual circumstances, making exhaustion a matter of WMATA’s grace.</p>	ACLU	7.10.1 (B)		<p>Accept with modification. Clarifies that in unusual circumstances WMATA can extend for additional 10 days (7.10.1 (a)), and if WMATA determines that even 10 additional days will not do it, allows WMATA to contact requester to provide opportunity to limit scope of request or to arrange an alternate time frame. (7.10.1(b)).</p> <p>Requester at all times will be fully aware of applicable time frame with opportunity to appeal if there is no agreement.</p> <p><u>See also</u> section 9.2.3, which addresses exhaustion of administrative remedies.</p> <p>Note that FOIA’s language allowing extensions is confusing, and our language tries to provide more clarity.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
48	In order for judicial review to be meaningful, a requester has to be able to exhaust her administrative remedies in a determinate and reasonably short amount of time, or has to be able to go to court without exhausting her administrative remedies. We suggest that the provisions on exhaustion be moved from section 7.10.2 to section 9.2, and that section 9.2 be revised to address this problem.	ACLU	7.10.2		<p>Accept. Provision on Exhaustion of Administrative Remedies moved to Appeals and Judicial Review Section 9.</p> <p>We also made changes to 7.9 and 7.10 to make it clear that requester is to be provided decision as soon as available, and when feasible, also to be provided documents at same time as decision.</p>
49	We urge WMATA to eliminate the requirement for certification, which will only slow the process. In addition there is no guide for the requester as to how he may “certify” his request.	Reporters Committee for Freedom of the Press	7.10.3		<p>Accept. Eliminated certification requirement and replaced with a signed statement that the basis for requesting expedited treatment is true and correct to the best of the requester’s knowledge.</p>
50	We do not understand the addition of “state and local governments” to the definition of “submitter.” Business notification aids business entities, state and local governments have no such proprietary interest.	Reporters Committee for Freedom of the Press	7.11.2		<p>Accept. Last sentence of 7.11.2(2) deleted.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

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51	Change “or” to “and” at the end of this section.	Reporters Committee for Freedom of the Press	7.11.5 (1)		Reject. Submitters must be given a chance to identify their business information, and we should not preclude them from doing so if they overlooked so doing in their initial submission.
52	This section should specify that requesters may request, and receive records in electronic format if WMATA maintains the records in that format.	Metroriders.org	7.12		Accept with clarification. No change is necessary. This is adequately covered in section 7.13.
53	Per page duplication is excessive. The cost per page should be comparable to actual WMATA xerography.	Metroriders.org Reporters Committee for Freedom of the Press	8.7		Accept. 15 cents.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
54	This section creates an infinitely-expandable deadline for the determination of administrative appeals, which can have the effect of making judicial review indefinitely unavailable, because section 9.2 requires exhaustion of administrative appeals prior to judicial review.	ACLU	9.1.3		<p>Accept. Although the previous language was consistent with FOIA, we have adopted a fixed, 30 working days period to handle administrative appeals.</p> <p>FOIA language is confusing, and in some instances may provide for an extension beyond 30 days. Here, while we avail ourselves of the additional 10 working days that the FOIA sometimes allows, we do not provide for an additional extension of time that may be allowed under FOIA.</p>
55	There appears to be a contradiction between section 7.10.2 and 9.2. WMATA needs to decide whether the administrative appeal process is optional or required, and these sections need to be revised to reflect the decision.	ACLU	9.2		<p>Accept. Section 9.2.1 amended to clarify that requester must exhaust administrative appeals process before going to court.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
56	This section should clarify that “substantially prevailed” means (in the case of a records request) that the requester obtained the records either by court order or at the discretion of WMATA following the filing of the judicial complaint.	Metroriders.org	9.2.3		Reject. “Substantially prevailed” is a FOIA term of art and will be interpreted in accordance with FOIA case law.
57	The date of receipt of a request for records should be the date received by the PARP Administrator, except that WMATA staff should be precluded from removing, deleting, transferring or destroying records upon their awareness of receipt of a request, even if that request has not been conveyed to the PARP Administrator.	Metroriders.org	not specified		Accept. Sections 5.3 and 5.4 amended to assure that records are preserved in accordance with records retention policy.
58	There is a concern that too many requests to WMATA staff for readily available information will be treated as PARP requests and subject to the long response process.	Metroriders.org	not specified		Accept. Addressed in Section 1.0.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
59	This paragraph’s generalized law enforcement agency disclosure authorization is too broad. This blanket policy provides significantly less privacy from police snooping and dossier making that currently found under Virginia travel privacy law at Va. Code § 33.1-252.2 which provides that law enforcement agencies must certify that info. is required in the course of an investigation where time is of the essence in preserving and protecting human life and or public safety. This section should be amended to assimilate the VA travel privacy law.	Fairfax County Privacy Council		6.1 D	Initial Recommendation: Reject . We rely on federal model. We do not rely on a single signatory’s policy judgment in its statute.” But see, following recommendation, which responds to FCPC’s reiteration of this comment during the final comment period. Receipt of this final FCPC comment caused staff to carefully scrutinize legal sources, reconsider its position and modify 6.1 D to include disclosure in exigent circumstances for law enforcement agencies.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
60	<p>WMATA should reconsider EPIC’s and FCPC’s concerns about paragraph 6.1D, and adopt a privacy standard more stringent than the federal model, such as found at Va. Code §33.1 - 252.2.</p> <p>Paragraph 6.1D should be amended to assimilate Virginia Privacy Law, not the lowest common denominator standard found in the Federal Privacy Act.</p>	<p>Fairfax County Privacy Council [Final Comment, April 2005]</p>		6.1D	<p>Reject in part and Accept in part. This is a renewal of the Council’s earlier comment with no additional justification. WMATA consciously relies upon federal statutory and regulatory provisions in a variety of contexts to produce uniformity in approach. If the starting point were state law, there would be the inevitable issue of which law to chose in the face of conflicting state law provisions. Under compact law, WMATA is not subject to the law of any particular signatory except where the Compact mandates the supremacy of signatory or political subdivision laws and regulations, such as in zoning matters (Section 75 of the Compact). The Compact is silent on privacy matters. Moreover, in many matters state lawmakers rely upon federal models because of the ease of finding a body of interpretive federal law. Nonetheless, 6.1 D can remain faithful to the federal model and include an exigent circumstance requirement for law enforcement agencies. Staff believes this strikes the appropriate balance between individual privacy interests and public safety.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
61	Geographic area for law enforcement exception should not be limited to transit zone. Any federal, state or local entity should be able to avail itself to exception.	MTPD		6.1D	<p>Reject in part and Accept in part. In its April draft, Staff accepted this comment and expanded 6.1 D to include any federal, state or local entity. Public comment in response to this expansion, see following recommendation, and further research has convinced staff that disclosures under 6.1 D should generally be limited to agencies and instrumentalities within the Transit Zone except in exigent circumstances relating to law enforcement. The Transit Zone limit gives weight to individual privacy concerns. Limiting disclosures to agencies and instrumentalities within the Transit Zone does not, however, adequately recognize that WMATA hosts visitors from around the country and beyond. Allowing disclosure to law enforcement agencies both within and outside the Transit Zone in exigent circumstances recognizes MTPD's concern for public safety, including concerns unique to our service in the nation's capital.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
62	<p>By its proposed revision, WMATA has massively expanded the loophole beyond the many law enforcement agencies already having “jurisdiction within the travel zone,” to every federal, state, and law enforcement agency in the entire United States.</p> <p>WMATA should rescind this proposed expansion of the paragraph 6.1D exception for law enforcement agencies.</p>	<p>Fairfax County Privacy Council [Final Comment, April 2005]</p>		6.1D	<p>Accept with modification. The referred to expansion is explained in the previous recommendation. Receipt of this FCPC comment caused staff to carefully scrutinize the federal materials. This provision’s federal counterpart, 5. U.S.C. § 552a(b)(7), is national in scope primarily because the federal government must so frequently interact with state and local agencies around the country. In contrast, WMATA has frequent interactions with agencies with jurisdiction within the Transit Zone. Based on this and further coordination with MTPD, staff recommends that the language return to the original provision, which applied to law enforcement agencies with jurisdiction within the Transit Zone, as suggested by FCPC with a modification to allow for disclosure to other law enforcement agencies in exigent circumstances. In order to fully effect this change, exception 6.1(A) has also been revised. Under the comparable Privacy Act exception, 5 U.S.C. § 522a(b)(1), disclosure under 6.1(A) should be related to the purpose for which the record is maintained. Privacy Policy 6.1(A) has been revised to reflect its Privacy Act counterpart.</p>

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

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63	<p>WMATA’s asked: Is the following controlled enough to make sure that this exemption is not overused: “We would only give your information to the head of a public agency or instrumentality with jurisdiction within the transit zone.”</p> <p>EPIC Response: No. Disclosure by WMATA of personal information to a federal agency requires a court order as well as accounting by WMATA.</p>	EPIC		6.1 D	<p>Reject. We follow the federal model. <u>See also</u> previous recommendations.</p>
64	The recommended change in streamlining the definition of “direct costs” is an excellent one.	Reporters Committee for Freedom of the Press	4.2		NO RESPONSE REQUIRED.
65	Support deletion of old exemption 5.1.7	Delaware, DC, MD, VA Press Association, Metroriders.org ACLU	Section 6.0		NO RESPONSE REQUIRED.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
66	Support removing two broad exemptions 5.2 and 5.6 from old PARP.	Delaware, DC, MD, VA Press Association ACLU	Section 6.0		NO RESPONSE REQUIRED.
67	Commends WMATA for adding provisions requiring that a denial be accompanied by a statement of reasons and the identification of the person responsible for the denial.	ACLU	7.9		NO RESPONSE REQUIRED.
68	Commends addition of these provisions.	ACLU	7.10.3		NO RESPONSE REQUIRED.
69	Internal administrative appeal of a WMATA decision is encouraged.	Metroriders.org EPIC	9.0		NO RESPONSE REQUIRED.
70	Commends WMATA for revising the policy.	Delaware, DC, MD, VA Press Association Metroriders.org EPIC			NO RESPONSE REQUIRED.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
71	The proposed policy reflects four principles that we support: records should be as open as possible, WMATA's handling of records requests should be subject to administrative appeal, WMATA's policy should protect private personal privacy, and the policy should be modeled on the Federal FOIA.	Delaware, DC, MD, VA Press Association			NO RESPONSE REQUIRED.
72	Support WMATA's efforts to make public access easier for all members of the public.	Delaware, DC, MD, VA Press Association			NO RESPONSE REQUIRED.
73	Support WMATA's approach to redaction of records.	Delaware, DC, MD, VA Press Association			NO RESPONSE REQUIRED.
74	Would be happy to work with WMATA in any way to would be helpful.	Delaware, DC, MD, VA Press Association			NO RESPONSE REQUIRED.
75	Appreciate the staff's efforts for greater openness through increased public access.	Metroriders.org			NO RESPONSE REQUIRED.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
76	Commends the proposal to maximize release of non-exempt information by redacting exempt information and releasing redacted records.	ACLU			NO RESPONSE REQUIRED.
77	Appreciates the provisions distinguishing, for purposes of fees, between commercial and noncommercial requesters and between private and public interest requests.	ACLU			NO RESPONSE REQUIRED.
78	Would be happy to draft a suggested revision to these provisions in the near future.	ACLU			NO RESPONSE REQUIRED.
79	Appreciates many of the changes that make WMATA's policies more similar to FOIA.	Reporters Committee			NO RESPONSE REQUIRED.
80	SmarTrip cards should be available to the public on an anonymous basis through cash sales. If someone voluntarily provides personally identifiable information FCPC agrees that WMATA should have a carefully drafted Privacy Policy and PARP.	Fairfax County Privacy Council (FCPC)			NO RESPONSE REQUIRED.

APPENDIX

STAFF RECOMMENDED RESPONSES TO PUBLIC ACCESS TO RECORDS AND PRIVACY POLICY COMMENTS

No.	COMMENT	PROVIDER	PARP SECTION	PRIVACY SECTION	STAFF RECOMMENDATION
81	The privacy policy is a degradation of a policy. It is not benefitting the system or its customers. The metro system needs improvement. The provider of this comment will not purchase a SmarTrip card, because she does not want the government to track where she is going. If the card were free then the government would be justified in tracking customer travel.	anonymous			NO RESPONSE REQUIRED.
82	Provider of this comment will not purchase a SmarTrip card. He does not agree with providing WMATA with any private information to permit us to track a customer's travels.	Individual; no stated affiliation			NO RESPONSE REQUIRED.
83	Adoption of the Policy if the first step. We urge WMATA staff be given adequate resources and training.	Delaware, DC, MD, VA Press Association			NO RESPONSE REQUIRED.