

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

ENERGY FACILITY SITING BOARD

Title of Rule: Access to Public Records Regulation

Rule Identifier: 445-RICR-00-00-2

Rulemaking Action: Direct Final Amendment

Important Dates:

Date of Public Notice: 09/11/2018

End of Public Comment: 10/11/2018

Authority for this Rulemaking:

R.I. Gen. Laws § 38-2-1 et seq.

R.I. Gen. Laws § 42-35-2(a)

Summary of Rulemaking Action:

Sets rules and procedures concerning access to public records maintained by the Energy Facility Siting Board.

The proposed amendments include changes to the following Sections: Section 2.4A, changed Board address, Section 2.4C, incorporated statutory language, Section 2.6, deleted self-regulatory language and reference to form, Section 2.7, deleted self-regulatory language, and deleted forms appended as Exhibit A and Exhibit B.

Additional Information and Comments:

If no formal objection is received on or before October 11, 2018, Energy Facility Siting Board will file the Amendment without opportunity for public comment..

Objections should be addressed to:

Kathleen Mignanelli,

Energy Facility Siting Board

89 Jefferson Boulevard

Warwick, RI 02888

Kathleen.mignanelli@puc.ri.gov

Regulatory Analysis Summary and Supporting Documentation:

Ensures that the public has access to public records

For full regulatory analysis or supporting documentation see agency contact person above.

445-RICR-00-00-2

TITLE 445 – ENERGY FACILITY SITING BOARD

CHAPTER 00 – N/A

SUBCHAPTER 00 - N/A

PART 2 - Access to Public Records

2.1 Authority

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 38-3-1 *et seq.* (“Access to Public Records”) and 42-35-2(a).

2.2 Purposes

A. The Purposes of this Regulation are:

1. To establish a Regulation to implement R.I. Gen Laws §§ 38-2-1, *et seq.* and 42-35-2(a) relating to access to public records maintained by the Board.
2. To identify and delineate categories of records exempt from disclosure; and
3. To provide the public and Board personnel with a Regulation which sets forth the rules and procedures applicable to access to public records maintained by the Board.

2.3 Policy

The Board recognizes both the public’s right to access public records and the individual’s right to dignity and privacy. It is the Board’s policy to facilitate public access to all public records that may be disclosed in accordance with the R.I. Gen. Laws § 38-2-10 *et seq.* It is also the policy of the Board to make all public records in the Board’s possession be available for public inspection and copying consistent with applicable state or federal law, unless otherwise prohibited by a court of competent jurisdiction.

2.4 Procedure for Requesting Public Records

- A. Except as provided in § 2.4(D) of this Part, a written request to inspect or copy public records should be sent to the Board Coordinator who maintains the records requested or, in the alternative, to the Board Counsel at ~~the address listed above~~ [89 Jefferson Boulevard, Warwick, R.I.](#)

02888. Written requests may be mailed, hand delivered, e-mailed or sent via facsimile. Hand delivered requests may be made during the Board's regular business hours. In order to assure that the Board is able to respond to the request as efficiently and as completely as possible, the request should identify and describe the records being requested with as much specificity as possible. A written record of all requests will be maintained by the Board Coordinator.

- B. If the description of records being requested is not sufficient to allow the Board to identify and locate the requested records, the Board will notify the person requesting such records that additional information is needed in order to properly respond to the request.

~~(3) — Upon receipt of a request for records, the Board Coordinator or Board Counsel will mark on the face of a written request the date the request was received. The Board will make every reasonable effort to honor the request within ten (10) business days of receipt of the written request.~~

~~(4) — If it appears that the request cannot be honored within ten (10) business days of a receipt, the board will use its best efforts to notify the requester of the status of the request within ten (10) business days. For good cause, the time to respond to the request may be extended for a period not exceed thirty (30) business days, inclusive of the original ten (10) business days.~~

C. If the inspection or copying is not permitted within ten (10) business days the Board shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation shall be particularized to the specific request made. In such cases, the Board may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the Board.

- D. A written request is not required to be submitted when the request is for any of the following:
1. documents prepared for or readily available to the public;
 2. rules and written statements of policy or interpretations formulated, adopted or used by the agency; or
 3. final orders, decisions, and opinions.

2.5 Hours of Inspections

When a request is made to inspect public records (as opposed to obtain copies), the requester will be advised when the records are available and he/she can then make an appointment to inspect those documents at the Board between the hours of 8:30 a.m. and 3:30 p.m. Monday through Friday. The time frame for the Board to respond to requests to inspect public records is the same as the time frame applicable to responding to requests for copies of public records as set forth above in § 2.4(C) of this Part.

2.6 Fees

- A. Official publications which the Board prepares in the discharge of its duties to inform the public on matters of public interest will be furnished free of charge when available.
- B. The Board will supply one (1) copy of any of its Rules and Regulations to an individual requesting them free of charge. Rules and Regulations of the Board are on file at the Office of the Secretary of State and certified copies thereof may be obtained from that office. Rules and Regulations of the board are also available online from the Secretary of State's website as well as the Board's website at [http: //www.ripuc.org/efsb/index/html](http://www.ripuc.org/efsb/index/html).
- C. The Board charges a fee for copying and/or search of retrieval of requested documents consistent with applicable state law. The Board charges \$0.15 per copied page; provided however, if the response to the request consists of twenty (20) or fewer copied pages, no fee will be charged. If the response to the request consists of more than twenty (20) copied pages, there will be a charge of \$0.15 for each page. The Board will charge \$15.00 per hour for the search and retrieval time required to respond to a request, whether the request seeks copies of records or the right to inspect records; provided however, there will be no charge for the first hour of search and retrieval time. The Board will provide the requester with an estimate of the copying costs and search and retrieval costs prior to responding to the request. The Board however, will charge the actual fees for the number of copies and the actual cost for search and retrieval time if those are more or less than estimated. The Board reserves the right to require a deposit of the estimated costs if the estimated cost is \$50.00 or more.
- D. The cost of copying and search and retrieval as provided in § 2.6(C) of this Part must be paid in advance of or at the time of delivery or inspection of the requested documents.

- E. Board personnel or, where applicable an outside copy service, will make copies of requested records. The Board does not have a copy machine available for use by the public to make copies.

~~(6) — The Board may utilize the form attached hereto “(Response to Request to Inspect and/or Copy Public Records”) to respond to a request; provided however, in some instances it may be appropriate for the Board to write a letter addressed to the requester setting forth such additional information as deemed appropriate under the circumstances.~~

2.7 Supervision of Inspections

The inspection of public records must be accomplished in a manner which will provide for general supervision by authorized Board staff. This is necessary to prevent the misplacement or unauthorized removal of records or any other action which may impair the integrity of the public record.

- ~~(2) — The Board Coordinator having possession of the public record requested shall have overall responsibility for the security of the public record. However, the individual in charge may designate a staff member(s) to coordinate the functions and responsibilities related to the copying and inspection of public records.~~
- ~~(3) — All personnel responsible for responding to requests for access to public records shall be made aware by their supervisors, of the provisions of this regulation and the procedures to be followed when an access to public records request is made. Board personnel having any questions regarding the procedures to be followed should direct inquiries to:~~
- ~~a. — The Board Coordinator who is responsible for the activity/function to which the public record being requested relates; or~~
 - ~~b. — In the event that the public record cannot be readily categorized as falling under the responsibility of Board, the request should be directed to the Board’s Counsel which will serve as a resource in matters relating to the public’s access to public records.~~

2.8 Severability

If any provision of this Regulation or the application thereof to any individual or circumstances is held invalid, such invalidity shall not affect the provisions or application of the remaining portions of the regulation which can be given effect. The provisions of these rules and regulations are declared to be severable.

EXHIBIT A

REQUEST TO INSPECT AND/OR COPY PUBLIC RECORDS
OF THE ENERGY FACILITY SITING BOARD
PURSUANT TO R.I. Gen. Laws § 38-2-1 et seq.

Complete this form, sign and return to:

Rhode Island Energy Facility Siting Board
89 Jefferson Blvd, Warwick, RI 02888
T (401) 941-4500
F (401) 941-1691

NAME OF REQUESTER:-

ADDRESS OF REQUESTER:-

TELEPHONE NO. OF REQUESTER:-

EMAIL : _____ FAX-
NO. _____

TITLE AND/OR DESCRIPTION OF DOCUMENT(S) REQUESTED TO BE INSPECTED ____ OR
COPIED

_____:

Please be as specific and descriptive as possible to assure that the Board will be able to
respond to your request as efficiently and as completely as possible.

FORMAT REQUESTED:

_____ PAPER : _____ FAX: _____ EMAIL (if
available) _____

~~NAME AND TITLE OF PERSON WITHIN THE BOARD HAVING POSSESSION OF
DOCUMENT(S), IF KNOWN:—~~

~~Copies of any document(s) are fifteen (\$.15) cents per page (or the actual reproduction
cost of~~

~~Paper larger than 8 ½ x 14"), plus an hourly charge of fifteen (\$15.00) dollars per hour
for search retrieval. There is no charge if the total number of pages is twenty (20) pages
or fewer. There is no charge for the first hour of search and retrieval.~~

~~Materials request ARE _____ ARE NOT _____ sought for the purpose of pending litigation
involving the Board or the State of Rhode Island.~~

~~Date: _____ Signature of Person Making
Request _____~~

EXHIBIT B

RESPONSE TO REQUEST TO INSPECT AND/OR COPY PUBLIC RECORDS
OF THE ENERGY FACILITY SITING BOARD
PURSUANT TO R.I. Gen. Laws § 38-2-1 et seq.

Dear _____:

On _____ the Board received your Request to Inspect and/or Copy Public Records Pursuant to R.I. Gen. Laws § 38-2 et seq. A copy of your request is attached:

A. RESPONSE TO REQUEST:

☐

GRANTED _____

☐

DENIED/DENIED IN PART because the following record(s) which were requested are exempt from disclosure pursuant to the following provisions of law:

☐

NO SUCH DOCUMENT(S) EXIST IN THE BOARD'S RECORDS

B. PROCEDURE TO INSPECT/OBTAIN COPIES OF PUBLIC RECORDS BEING RELEASED PURSUANT TO SECTION A ABOVE:

☐

A copy of the requested records will be mailed to you (or you may call the make _____ an appointment to pick up the records during the Board's normal business

hours) upon the Board's receipt of payment of \$ _____ representing the copying

costs i.e. \$ _____ and/or search and retrieval fees i.e.

\$ _____ pursuant to

R.I. Gen Laws § 38-2-4. Please forward payment to the address listed below:

☐

A copy of the requested records is enclosed. (Because the number of copies

_____ pages was twenty (20) or fewer pages and there were no search and/or retrieval

_____ fees there was no fees associated with the Board's response to your request.)

☐ The requested records are available for inspection at the _____ Board between _____ The hours of 8:30 am and 3:30 pm Monday through Friday, at the address _____ Specified below. Please call to arrange an appointment. The search and Retrieval costs associated with the request to inspect is \$ _____. That amount is payable at time of the appointment to inspect the records.

☐ Not Applicable.

C. If your request, or any part thereof, is denied, you have the right to appeal to the _____ Board Counsel. If your appeal is denied, you have the right to appeal to the _____ Attorney General or the Superior Court.

DATED: _____ SIGNATURE: _____

Checks should be made out to: _____ "General Treasurer, State of Rhode Island"
Mail or Hand deliver Checks to: _____ Rhode Island Energy Facility Siting Board
_____ 89 Jefferson Blvd.
_____ Warwick, RI 02888