

Public Records Act Exemption for Conservation District Farm Plans

Washington's [Public Records Act](#) (PRA) requires government agencies to release requested public records within their possession unless there is a specific statutory exemption or a court order protecting them. Farm Plans developed by Conservation Districts, with some exceptions, are exempt from disclosure under the Public Records Act. The following is guidance to interpret the exemption.

Background

[Substitute Senate Bill 6617](#), passed in 2006, defined a farm plan and established protections from disclosure under the Public Records Act. The bill added provisions to two statutes: [RCW 89.08.560](#) and [RCW 42.56.270\(17\)](#).

What is a farm plan?

A farm plan as defined in [RCW 89.08.560](#) is: *"...a plan prepared by a conservation district in cooperation with a landowner or operator for the purpose of conserving, monitoring, or enhancing renewable natural resources. Farm plans include, but are not limited to, provisions pertaining to:*

- (a) Developing and prioritizing conservation objectives;*
- (b) Taking an inventory of soil, water, vegetation, livestock, and wildlife;*
- (c) Implementing conservation measures, including technical assistance provided by the district;*
- (d) Developing and implementing livestock nutrient management measures;*
- (e) Developing and implementing plans pursuant to business and financial objectives; and*
- (f) Recording, or records of, decisions."*

This definition includes most categories of information usually contained in the file folder for that landowner/operator.

How does the exemption work?

The exemption relies on a specific set of facts to become effective. The exemption in [RCW 42.56.270\(17\)](#) only applies to farm plans developed by a conservation district in the State of Washington. The law does not apply to names and addresses. It requires conservation districts to inform landowners and operators who request a farm plan of information that is disclosable if requested. Farm plans cannot be released until the conservation district receives a copy, signed by the person who originally requested the plan, affirming the accuracy of its contents **and** one of the following three situations applies:

- 1) The person who originally requested the plan gives permission to release the farm plan;
- 2) The person who originally requested the plan uses the farm plan for permitting purposes (i.e. attaches to a building permit request);
- 3) The farm plan is developed under the state clean water act for a dairy, AFO or CAFO in which case certain information in the plan is disclosed in ranges (to be determined by WSDA) rather than specific numbers. See [RCW 90.64.190](#). (see below)

What about farm plans developed for Farm Bill programs?

Section 1619 of the 2014 Farm Bill protected certain information from agricultural producers

from disclosure. For more information on that, go to page 7 (below) of the [NRCS publication linked here](#).

Understanding the 2014 Farm Bill Conservation Programs

Your Information: What's Public and What's Private?
As a federal government agency, NRCS is bound by several federal laws that govern what information about your program participation is releasable and what is not.

The Freedom of Information Act
The Freedom of Information Act (FOIA) is a federal law that allows any person the right to obtain federal agency records. All United States government agencies are required to disclose records upon receiving a written request for them, except for those records that are protected from disclosure. This right of access is enforceable in court.

Any person can request access to NRCS records. Requests must be in writing and indicate that the request is made under the Freedom of Information Act. The agency's Freedom of Information Act officer will determine whether the requested information is exempt from mandatory disclosure. For example, information that is classified to protect national security, proprietary business information and private personal information is protected.

The Privacy Act of 1974
The Privacy Act of 1974 was enacted to protect U.S. citizens against unwarranted invasions of their privacy stemming from the collection, maintenance, use and disclosure of personal information by federal agencies. It also grants people the right to access their own records maintained by government agencies, unless those records are covered by an exemption. It also provides procedures for correcting errors in records.

The Privacy Act requires that federal agencies take steps to protect private information. NRCS employees whose duties require handling records must, at all times, protect the integrity, security and confidentiality of the records. All private information is kept in secure areas when not in use during office hours.

Section 1619 of the Farm Bill
Section 1619 of the Farm Bill prohibits USDA from disclosing certain information that has been provided by agricultural landowners and producers in order to participate in USDA programs, except as necessary for delivering technical assistance. Some information developed by the agency concerning your property is also protected.

Section 1619 of the Farm Bill prohibits the release of information that falls into these categories:

- Information concerning the operation, practices or the land itself.
- Geospatial information, such as maps, surveys, and charts. Aerial photographs may be protected only if they contain data identifying characteristics of the agricultural land.

Section 1619 does not prohibit the disclosure of payment information, including the names and addresses of USDA payment recipients. Section 1619 does not apply to statistical or aggregated information that protects the name of individual agricultural producers, owners or sites.

You may give consent to information disclosure, however. Consent must be provided in writing and include your name, which information is to be released, to whom the data is to be released, and the length of time the data is to be available for release. You are not required to give your consent in order to participate in or receive any benefit under a USDA program.

Sometimes it's necessary for NRCS to share your information with partner agencies in order to implement conservation programs. This is permitted under Section 1619, if the partner agency has signed a Memorandum of Understanding with NRCS.

What information does Section 1619 protect?
FAQ: Examples of documents that may be withheld under Section 1619 of the Farm Bill include, but are not limited to:

- conservation plans
- wetland determinations
- Highly Erodible Land determinations
- acreage amounts
- assistance notes
- National Resources Inventory data
- flood damage surveys
- program contract information

TIP
Share Your Conservation Story! One of the best ways to educate others about natural resource conservation is by sharing your own conservation story. A personal account of your work with NRCS will help other farmers and landowners to understand how NRCS can help them, too.

Here are ways that you can help:

- Be featured in a conservation success story produced by NRCS.
- Be available to be interviewed by local news media.
- Host a site tour for visiting dignitaries, reporters or the public.

Please let your NRCS District Conservationist know if you're willing to do any of the above. He or she will connect you with our public affairs staff.

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- 2) Volume of nutrients generated;
- 3) Number of acres covered by plan/used for land application of livestock nutrients;
- 4) Livestock nutrients transferred to other persons; and
- 5) Crop yields.

RCW 15.53.9042: Information regarding production and use of commercial feeds can be disclosed to the extent that it does not disclose the operations of any person.

RCW 15.86.110: "business related information" concerning organic certification "shall be exempt from public inspection and copying" except for applications and lab analyses.

Suggested actions for districts

Draft an addendum for inclusion in your cooperator agreement informing the landowner or operator who requests the development of a farm plan about their options under this exemption of the Public Records Act. As part of this it would be good to:

- Define, for the purposes of your district, how a signed farm plan is officially "received" and how the district plans on accounting for that receipt;
- Consider obtaining permission from the landowner to disclose the farm plan if a request comes in;
- Specifically ask the landowner to advise the district if the farm plan is used to obtain any sort of permit;
- Revise your written policy for public records requests accordingly. On the following page, we have provided a sample addendum to your cooperator agreement.

References: References are links to statute contained in this District Operations Brief.

Questions: Contact your [Conservation Commission Regional Manager](#)

Other PRA exemptions of interest

Exemptions from the requirement to disclose are generally located in [RCW 42.56](#). Of particular interest in relation to development of farm plans are exemptions for disclosure of information regarding archeological artifacts and sensitive wildlife data (such as nesting sites). There are a few provisions relative to agricultural practices located elsewhere that may also affect farm plans:

RCW 42.56.380: certain information regarding the raising of agricultural crops and livestock.

RCW 90.64.190: The following information on dairies, AFOs, CAFOs not required to apply for a permit is disclosable but "only in ranges that provide meaningful information to the public while ensuring confidentiality of business information."

- 1) Number of animals;

Sample Addendum to Conservation District Cooperator Agreement

INFORMATION ON DISCLOSURE OF FARM PLANS

Substitute Senate Bill 6617, which became law on July 1, 2006, provides a mechanism by which farm plans may be protected from disclosure under the Public Records Act. The legislation requires Conservation Districts to inform cooperators of information that may be disclosed upon request. Exemptions from the requirement to disclose are generally located in Chapter RCW 42.56.

The following describes information a conservation district is required to disclose pertaining to a Farm Plan. Once you have had a chance to review and fully understand this information, please sign this form to indicate your understanding.

A. When can a Farm Plan be released?

Farm plans cannot be released until the conservation district receives a signature on the plan from the person who originally requested the plan, affirming the accuracy of its contents, and one of the following:

1. The person who originally requested the plan gives permission to release the farm plan.
2. The person who originally requested the plan uses the farm plan for permitting purposes (i.e. attaches to a building permit request).
3. The farm plan is developed under the state clean water act for a dairy, AFO, CAFO in which case certain information in the plan is disclosed in ranges (determined by WSDA) rather than specific numbers. See RCW 90.64.190.

Please note that names and addresses are not exempt from disclosure.

B. Is this Farm Plan being developed for permitting purposes now or in the future?

Please circle: YES NO

If you circle NO and later decide to use the Farm Plan for permitting purposes, please call our office to inform us of the change.

Please sign and date to indicate that you have reviewed this information.

Sign and Date here: _____

Signature

Date