

## **Ohio EPA Division of Air Pollution Control Public Records Request Process Analysis and Guidelines**

### **Summary**

DAPC Central Office, the District Offices, and Local Air Agencies (collectively referred to in this document as the Agency) have historically responded to public records requests based on procedures developed within each office. Largely this has been due to the fact that most records historically have been maintained in hard copy format. Each DO/LAA has a hard copy filing system developed years ago that best suits the structure and needs of each individual office. Many records have been maintained well beyond the records retention schedule. Beginning around 1992, electronic records primarily in the form of word processing documents and e-mail began to constitute a part of the public records generated or received by the Agency. No formal structure has been applied to the organization or accessibility of these electronic records over time. Mostly, individuals have maintained records largely without respect to any document retention schedule. Deciding whether to add an electronic record to the hard copy file has been completely up to each DO/LAA and Central Office employee. While this document is not intended to establish a document management strategy going forward, it does recognize the need and importance for consistent document management principles in order to efficiently respond to public records requests. This document also recognizes that requests for records come in various forms and scopes, for varying reasons and is intended to provide a consistent approach to responding to the requests as an Agency.

The Permitting and Enforcement Committee formed this workgroup to take a look primarily at how each DO/LAA and the Central Office respond to public records requests. Following are some key findings and Guidelines established going forward as increased use of electronic creation and storage of public records occurs more often. Document management, public expectations of accessibility to public records and technology are all undergoing significant transformation. Once approved by the P&E Committee, this document should be reviewed annually to reflect the “current” lay of the land until such time that responding to public records requests and the associated records management systems used to manage the records becomes more stable and consistent.

This document and the documents referenced herein can be accessed at Ohio EPA Internal Answer Place Topic ID 1968 “DAPC Public Records Request Working Group”

### **Current lay of the land**

Responding properly to public records requests starts with knowing what documents need to be retained and made available, and having a method for accessing/providing those documents. It was recognized by the group that every office has developed its own system over time, that this has been a natural development, and that different, but consistent systems across offices will likely continue going forward. The group also

learned that there are some basic document management requirements that apply to all offices. The group started by reviewing/gaining a common understanding of these existing guidance documents and requirements. The documents are as follows:

- Electronic Records Management and Records Retention Update - May 2007
- Managing Electronic Mail Guidelines for Ohio EPA

Richard Boudier from the Directors Office went through these documents with everyone in the group to make sure that these basic requirements are understood and implemented at each office. However, this process still leaves open many, many questions that the group discussed and came to consensus on including:

- *Who takes the lead on responding to a given request*  
The group identified six categories and developed a proposed approach for each one as detailed below.

**1. Public Records (PR) request is made directly to the DO/LAA responsible for the facility files under review.**

- the request is narrowed down; the hard copy files are pulled;
- the attorney reviews and signs off on them, pulling out anything that isn't considered public, if this is done, it's indicated in a memo to the file reviewer;
- DO/LAA asks for Central Office records as needed to complete the request; an appointment is scheduled for the requestor to come in to view the files; typically, these are hard copy files only, but if the information is electronic, it is either printed or shared electronically versus viewing it in STARS2

**2. PR request is made to central office only.**

- the central office contact works with the requestor to narrow down the request and shares it with the appropriate individuals;
- the attorney reviews and signs off on them, pulling out anything that isn't considered public, if this is done, it's indicated in a memo to the file reviewer;
- the central office public records contact will schedule an appointment for the requestor to come in to view the files; they will assist them with viewing electronic files in STARS2 and reviewing hard copy files; the central office public records contact has "non-agency"<sup>1</sup> access to the information in STARS2, such that they cannot view confidential business information (CBI) or change any information within the system;
- additional appointments to view files at other locations maybe scheduled, as necessary to view hard copy files at other offices, if multiple DO/LAAs and Divisions are involved

**3. PR request is made to all.**

- the central office contact works with the requestor to narrow down the

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<sup>1</sup> "Non-agency" for purposes of this document refers to staff outside of OEPA DAPC and DO/LAA personnel; in STARS2 they are allowed read only access and CBI cannot be viewed.

"Agency" for purposes of this document refers to all OEPA DAPC and DO/LAA personnel; in STARS2 they have read/write access and can view CBI.

- request and shares it with the appropriate individuals;
  - the attorney reviews and signs off on them, pulling out anything that isn't considered public, if this is done, it's indicated in a memo to the file reviewer;
  - the central office public records contact will schedule an appointment for the requestor to come in to view the files; they will assist them with viewing electronic files in STARS2 and reviewing hard copy files; the central office public records contact has "non-agency" access to the information in STARS2, such that they cannot view CBI or change any information within the system; additional appointments to view files at other locations maybe scheduled, as necessary to view hard copy files at other offices, if multiple DO/LAAs and Divisions are involved
- 4. **Requests that go to the Director's Office**
  - Rich Boudier determines which records need to be provided for review and works with the appropriate office following the steps outlined above Rich determines the specific information being requested and works with Central Office if the information is contained in STARS2; if there is information the DO/LAA may have, Rich will work with Sharon Stills (OEPA DAPC contact??) to contact the appropriate DO/LAA to arrange for providing access to the information.
- 5. **Requests for "everything"**
  - Requests are handled using item 4 above as the starting point.
- 6. **Informal Requests**
  - Requests from the public do not have to be a formal request. All non-confidential claimed information can be provided on an informal request/response basis.
  - Providing information does constitute a public record.
- *Under scenarios 2 & 3 who will produce the STARS2 information? Should it be Central Office?*
  - Central Office. CO will provide access and/or print information for the requestor. CO will notify the DO/LAA that a request was made and what information was provided.
- *Do records have to be maintained hard copy?*
  - The group came to the consensus recognition that all records from the public's stand point are "Agency" records. Meaning, all records, whether they are hard copy records at each DO/LAA, email, documents on hard drives of individual employees, or electronic records in STARS2, they are "owned" by both the DO/LAA and Central Office. Mainly this consensus point focused on the STARS2 data and a common understanding was achieved that records in STARS2 are as much a part of the DO/LAA document repository as they are the Central Office Repository. This is an evolution from the past where electronic documents in or produced by, for

example PTIs2000, were considered to be “owned” by Central Office. The group determined that each office will continue to maintain records in the format and places currently established within each office (i.e., ***the facility record does not have to be maintained completely in hard copy***). The Group recognized that this may change over time as use of STARS2/Air Services evolves over time.

- *How is email to be “stored” for access in response to requests?*
  - Currently email is maintained in individual user accounts for the most part. Some offices or individuals print a copy of the email and add it to the hard copy facility file. Email must be maintained in accordance with the “Managing Electronic Mail Guidelines for Ohio EPA” guidance from the Director’s Office and the record itself must be retained in accordance with the records retention schedule.
  - Each Office should look to developing and documenting a process to retain email records and make them accessible to more than one Agency individual in the event the sender/receiver is not available (out sick, vacation, left the organization, etc.)
- *Should all records, correspondence, etc. be stored in STARS2? How about historic records?*
  - The group came to a consensus understanding that STARS2 is not a document management system with respect to public records management. Currently STARS2 is structured to handle a lot of information, but it is not structured to handle all aspects of information that traditionally has been housed in the hard copy facility file. Ohio EPA Central Office encourages use of STARS2 as the repository of records (new and historic) where the current structure of STARS2 aligns with the type of information to be stored (e.g., permit-related correspondence and scanned copies of old permits).
  - The group agreed that accessing all records from STARS2 in response to public records requests is not yet adequate (i.e., there is no “one stop shop view of all records for access/download in response to a given request). DAPC Central Office should develop a simple, comprehensive presentation of all information housed in STARS2 in a way that allows Agency staff to choose and provide requested public information<sup>2</sup>.
- *Should the public have direct access to STARS2 and/or information contained in STARS2?*
  - The group agreed that all the data except that which is claimed confidential is public information and should be provided upon request.
  - The group learned that Central Office and some District Offices have begun allowing supervised direct access to STARS2 via a non-confidential user role for the public to inspect records housed in STARS2. Discussion focused on the need to identify who is making public records requests, so

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<sup>2</sup> Ohio EPA ITS is looking into various document management systems that could integrate with the underlying STARS2 schema/database to provide true document management type access to the STARS2 data/documents)

we know what facilities are being reviewed and and for what purpose, yet it's not necessary to know what the individual reviews. Documenting who is reviewing what facility files is desired for multiple purposes as outlined below:

- Help the reviewer find the information of interest – STARS2 is a complex system and a knowledgeable user is needed to navigate the area where the information of interest is located
- To put the Agency in a position to better identify other information not contained in STARS2 that may be of interest to the reviewer.
- To ensure unauthorized access is not compromised
- To help educate the reviewer of the context and content of the reviewed documents/data

DAPC and the District Offices have WebEx available as a tool to share with the public the documents maintained in STARS2 without requiring the reviewer to travel to an Ohio EPA district office or local air agency. Sharing STARS2 information this way may reduce or eliminate the requestor's need to directly access data in STARS2.

**Possibilities for ways to handle PRs in the future now that much of the information is electronic within the STARS2 program:**

1. Develop a system whereby the public can view facility files (permits, applications, facility profiles, etc.), in read only mode, in STARS2. They would not have the capability to change anything and CBI would be locked out and unavailable. There is currently a workgroup assigned to develop this option. It's technically feasible; we need the political and financial backing to pursue it. This would be sometime down the road.
2. Develop a way to compile a comprehensive record of the facility files in STARS2 into a .zip file and save them to a disk or hard drive, so it can be transmitted electronically to the PR requestor. Currently, this can be done in STARS2 in parts, i.e., under the "Application" tab, at the bottom you can select "generate zip file"; this will compile everything that was uploaded into the system by the company when that application was submitted. This can be done per permit application, so in order to do this comprehensively for the facility, it would be necessary to take this step in each application and this would result in several .zip files versus one comprehensive file, as discussed in possibility #1.
3. Provide each DO and LAA with the ability to access STARS2 using a "non-agency" username and password. Although this is an option, it is not preferred due to the necessity to still have someone assist the public with the review in STARS2, since in most cases they will be unfamiliar with the program.

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**A summary of identified specific questions and responses that the group developed as part of developing this guidance document.**

1. Is there a standardized email retention policy for central office and the field offices that addresses email retention schedules and the types of emails that are public records?

**Yes. See Answer Place Topic ID 1968 titled “DAPC Public Records Request Working Group” for a link to the guidance.**

2. Is there a standardized approach that clearly identifies the respective responsibilities for STARS2 public records (which records are maintained/generated by Central Office and which records are maintained/generated by the field offices).

**The records generated by or added to STARS2 are “owned” by both the field office and Central Office. Data is retained in STARS2 indefinitely as of the writing of this document. No further maintenance is needed. The records that are added to STARS2 that are not directly required by STARS2 for permitting or emissions reporting purposes are added at the discretion of the DO/LAA and whether there is an appropriate place for the information to be added to STARS2. For example, follow-up correspondence to an emissions report review might be added to STARS2 in the “Correspondence History”, but you likely would not add a copy of a Notice of Violation (NOV) at this point since CETA will eventually be incorporated into STARS2.**

3. Is there a policy that identifies what information in STARS2 comprises a public record? , For example draft permit recommendations have not historically been treated as public records; the issued (draft and final) permits are public record.

**Everything in STARS2 except CBI and enforcement documents are public record. Working documents can be removed from STARS2 consistent with the Electronic Records Management and Records Retention Policy Update.**

4. STARS2 provides the ability to produce a variety of reports accessing similar data. In the event of an "any or all" public records request, are we required to produce every report possible under STARS2 for the requested facility (or facilities)?

**The standard approach should be to discuss the request with the requestor to see if what is requested/provided can be narrowed down. Overly broad records requests can be referred to Ohio EPA legal if the requestor insists on every record ever produced and currently held by the Agency.**

5. Is there a plan to develop a function in STARS2 that will readily generate all

public STARS2 records - ideally via a single PDF document for each facility?  
**STARS2 was not designed primarily as a document management system. However, DAPC will investigate developing a function whereby STARS2 can readily generate all public STARS2 records.**

6. Ohio EPA is no longer producing hard copies of issued permits. These permits are available in STARS2 and via the internet. Are field offices responsible for printing the documents and incorporating them into our facility files? Are field offices responsible for printing these documents in order to provide them as part of a public records request?

**The strategic goal is to eventually maintain all records electronically for the regulated community. However, this involves developing a document management system and a systematic, consistent method and storage of similar records from office to office. For the foreseeable future, each office can decide what electronic records to print to hard copy and place in the hard copy facility file. It is up to each DO/LAA to determine how the records are maintained. Documents that are available on the internet or electronically (e.g., PDF) can be either referenced or provided on disk or via email respectively, unless hard copies are expressly requested. If hard copies are provided, copying costs can be charged in accordance with Ohio EPA copying policy (note, staff time cannot be charged – only the actual cost of the paper and copy supplies as incorporated into the rate established in the policy). Electronic reference or supplying electronic files should be encouraged in response to requests.**

#### **Internet documents**

7. Many of the references we use (including regulations and issued permits) are freely available to anyone through the internet. Are we required to print out copies of these documents as part of a public records request? Does it matter if we may maintain electronic copies of some of these documents on local computer systems or STARS2?  
**See the answer to 6. above.**
8. Should all e-mail messages pertaining to a regulated facility be printed out for the hard copy file? Alternately, is it possible to save e-mail messages to a CD that can easily be retrieved by the requester? Rather than printing out information from STARS2, would it be better to create a ZIP file and save it on a CD that could be provided to the requester? How difficult would that be to accomplish? Would it be in a form that the requester could easily retrieve? If e-mail messages are already printed out for the hard copy file, is it necessary to print them out again for a File Review request?  
**Public records can be in hard copy or electronic form. Email is an electronic public record and must be maintained in accordance with the Records Management and Records Retention Policy. Consensus is that printing copies of email is not efficient and results in redundancies.**

However, it is recognized that STARS2 is primarily not a document management system. As a result, it is up to each office how the hard copy files are maintained relative to information housed in STARS2.

Electronic means for providing the requested information is always preferred. It is not difficult to create a zip file (in fact some information downloaded from STARS2 can be downloaded in a ZIP format) but STARS2 does not have this functionality system wide (i.e., it is not a document management system). The information is easily retrieved on a record-specific basis. Comprehensive records for a given facility or a similar record for multiple facilities is more problematic at this time. Email can be saved in an electronic filing system, or they can be saved locally and uploaded into STARS2.

Only one copy of requested information needs to be provided in response to a request whether the information is provided in electronic or hard copy format.

See 6 above as well.

9. If the a document or email message only exists in electronic format, should it be stored in an electronic file outside of Outlook, GroupWise, an individual's hard drive (e.g., L:/Data/Facilities, or possibly save in STARS2), or can it be retained in the place where it originated? Is it possible to save e-mail messages to a CD that can easily be retrieved by the requester?  
**See 6 above. Generally, the information needs to be accessible by more than one individual (in the event an individual is not available to access the electronic files). As indicated in 8 above, email can be saved to disk, however, the method for managing all electronic files should be consistent within an office, though it is not currently for some offices. This is a developing area of document management that is being investigated by Ohio EPA and DAPC for both STARS2 and document management in general.**
10. If e-mail messages are retained in Outlook, when a File Review request is submitted if they ask for all e-mail messages, should everyone involved print out their messages even if multiple people received the same message?  
**Email retention guidelines govern who must maintain the email. At least one copy of the email must be provided in response to the request. See email guidance in internal Answer Place Topic 1968. If the reviewer will accept an electronic copy of the e-mail message, then it is not necessary to print it out, unless directed to by the DO/LAA involved.**
11. If e-mail messages are already printed out for the hard copy file, is it necessary to print them out again for a File Review request? This of course relies on a

good system of ensuring that all relevant e-mail messages end up in the hard copy files.

**No.**

12. For a file review request, which is better, printing out all information from STARS2 or allow the requester to review the STARS2 information on the computer and decide what they want to print out? This partly depends on the size of the facility. Also, does allowing the requester access to STARS2 creates problems with access to confidential information?

**After much discussion, it was decided that it is up to each office how to provide access. Generally, printing should be minimized. There are generic STARS2 user accounts that offices can use to log in as that shields any view of confidential claimed information. DAPC Central Office will look into a document management system which will allow for the easy compilation of documents stored in STARS2 by facility, so as to avoid the need for public navigation of STARS2.**

13. Do we want to store all facility information electronically in STARS2? If yes, how much storage capacity does STARS2 have?

**Storage capacity in STARS2 is almost infinite (well, close to it). However, see 6 above with respect to using STARS2 as a document management system at this time.**

14. If we do not store everything in STARS2, do we want to scan hard copy information and store on our local drives (e.g., L:/Data/Facilities)?

**This should be addressed consistently within each office based on established office policy and procedures. STARS2 can be used to store information as well (although currently there is a resource issue with getting information back out depending on how/where the information is uploaded).**

15. During file reviews, if a person is physically in our office we do not have a way to provide them access to STARS2.

Specifically:

Should we have a computer set up for them?

How do they access STARS2 and know what data is available?

How do we keep them from changing data or accessing info for other facilities?

How do we keep them from viewing Trade Secret info?

How should we provide information to them once they leave? (properly excluding Trade Secret info)

**A generic user has been created. DAPC Central Office will work to provide the user/login information to make this possible at each office. See 12 above.**

16. Sometimes we get requests from people or companies out of town and will not be making the trip into Columbus.

If a person needs to sit with the reviewer during a file review, then who should that be (ES2, admin, etc)?

If the person does not want to come into our office but requests all facility information, then what are we legally obligated to provide?

What format do we provide the information?

Can we quickly provide info electronically downloaded from STARS2?

**DAPC will work on the feasibility of a comprehensive presentation of STARS2 data without direct access to STARS2. You can work with Sharon Stills to set up a WebEx session to view the STARS2 information remotely. Ultimately if someone wants all records we have, we must provide all records we are aware of and can access. However, usually requests like this start out very broad and can be narrowed by working with the requestor.**

17. Are there plans to develop protocols for dealing with public records requests and making STARS2 information available? Issues to cover include:

- Will there be a division-wide protocol or separate protocols for CO and the DO/LAAs?

**Protocols are by office depending on the approach the offices use to maintain records. However, initial responses should be addressed using the approaches provided in 1-5 at the beginning of this document.**

- What is the expectation for staff resources to assist in file reviews (tech or admin staff)?

**Similar to hard copy file review, no one necessarily has to be available the entire time. STARS2 does present navigational issues for non-STARS2 users. DAPC Central Office makes administrative staff available in most instances.**

**Rich Boudier is developing a public records training course. This will be offered to all DO/LAA staff.**

- What will need to be done when the system is down?

**Most records requests are not emergency requests. The system is generally available. Default is to wait until the system becomes available – call Mike Ahern if there is a perfect storm.**

18. If protocol includes copying of data from STARS2 to a disc, is there a way to do this quickly and easily in STARS2? Currently you need to save separate portions of the profile which is time consuming.

**DAPC Central Office will try to develop something that minimizes time and**

**effort in “gathering” all records for presentation to the requester.**

19. Is there a plan to revisit the agency-wide records retention policy?

On the call it was stated that a records retention policy is in place. True, however, it is our understanding that the agency was working toward updating that policy. To our knowledge, Alan Lapp was working on this in ~ 2003-04 but did not complete it prior to his retirement. In looking at the retention schedules on file, it appears that most retention schedules related to air files haven't been updated since the mid-80s. SEDO-DAPCs retention schedule says that we will back up our documents to microfilm, which seems rather antiquated. It is also odd that each district office has their own retention schedule and they differ from each other in the required retention period. SEDO-DAPC has not completed any records retention, and has been holding off on this due to our understanding that an updated policy would be developed.

**Yes, there is a plan to revisit the agency-wide records policy. Rich Boudier was recently designated as the Records Officer for the Agency, along with Pete Simcik from Legal. Both will be working to update and consolidate the schedules for the entire Agency.**

20. Are there plans to provide additional computer resources for file reviews involving electronic files?

**There are no plans to dedicate walk-up computer resources for public records request purposes. Web access to either STARS2 or significant information from it will reduce the need to provide computer resources for public records requests.**

21. How are offices handling information related to a facility, but not related to a permit action, e.g., inspection reports, final enforcement documents (Director's Final Findings and Orders are posted on OEPA's website and in the weekly review per STARS2 Answer Place), stack test reports, correspondence, etc.? Is this information being scanned and converted into a .pdf document or saved electronically, so it can be uploaded into STARS2? Is this a good idea? Does STARS2 have the capacity to hold all of this electronic information? What's the easiest route to get this into STARS2, so we can find it later and it's searchable? Is this something only OEPA can do?

**See 13 above.**

22. We'd like to avoid being required to assist the public with electronic file reviews of electronic documents in STARS2, because this is time consuming, resource intensive and we run the risk of divulging confidential business information unintentionally. So far, we have been able to accommodate public records requests by extracting the information from STARS2 and putting it into another form, e.g., Word, Excel or .pdf and emailing it to the requestor. Is this a good

way to handle the request, if it can be done easily? Can Title V, PTI and PTIO applications and EAC forms be easily extracted out of STARS2, if so, in what format does it end up, e.g., Word or Excel?

How are offices maintaining electronic copies of files outside of STARS 2? Is all of the information submitted electronically being printed and maintained in the hard copy file?

**There are no requirements or standards established by Ohio EPA. Most offices have different nonexistent methods for maintaining electronic documents housed in STARS2. Different offices are handling whether they print electronic information for the hard copy files based on their own offices' practices. Electronic records can be provided in response to public records requests, but DO/LAAs are welcome to continue whatever procedures they choose with respect to maintaining hard copy files.**

23. How is the confidential information in STARS2 to be reviewed by legal and how do we shield the information deemed confidential?

**CBI is shielded by default in the PDF documents produced by STARS2. Review is at the office level if the shielding of information is challenged. Use of the generic user account would automatically prevent viewing of CBI. Agency and DO/LAA staff should not log in with a non-agency person to review STARS2 data since this could compromise CBI**

24. During legal discovery, how do we provide information to opposing counsel? Typically this is an activity of the AG. In what form should it be provided? (this may be a topic for a different workgroup)

**Normally, the DO/LAA staff should work through the AG's to ensure that the AG has had an opportunity to review the information for privileged communications before it is released to defense counsel. Furthermore, it's important for the AGs to know the type of information the other side will be working with. The form of the data we provide is normally dictated in the "discovery demand"<sup>3</sup>. If they ask us to burn everything to CD, and we can, we are required to do so. In the absence of specific instructions, we can provide it to them on the most convenient media for us. The attorneys generally work out the specifics of discovery during the information exchange process.**

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<sup>3</sup> After a complaint and answer are filed, or after an appeal at ERAC has been filed, the discovery stage begins. Discovery is the fact finding portion of litigation and consists of interrogatories (questions from one side to the other), request for production of documents, and depositions. When a party makes a discovery demand, they direct the other party to answer interrogatories, provide for the production of documents and check availability for witness depositions.