

# CITY OF KETTERING — ADMINISTRATIVE POLICIES

## PERSONNEL POLICIES & PROCEDURES

MAY 2018

### Policy Number 813: Public Records

This policy repeals Public Records Policy dated June 2016.

#### A. Purpose

This policy has been developed to ensure that the City of Kettering is in compliance with the requirements of the State of Ohio Revised Code (R. C. 149.43 and related sections), as it pertains to Public Records. This policy explains the general requirements of the Public Records Act and establishes procedures to be followed for charging for copies of public records, handling public records requests, and using electronic records and social media.

#### I. Definitions

- a. All records kept by the City of Kettering are public records unless they are exempt from disclosure under Ohio law. Please see R.C. 149.43 and related sections for a full list of exempted records.
- b. A record is defined to include the following: A document in any format – paper, microfilm, audio/video recordings, and electronic (including, but not limited to, computer files and business e-mail and text messages) – that is created, received by, or comes under the jurisdiction of the City of Kettering that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the City.
- c. The cost for a copy of a public record is defined as the actual cost to produce the copy. This may include, for example, toner, paper, and amortization of the cost of copying equipment. The amount charged may **not** include labor costs for employee time.

#### 2. General Requirements of the Public Records Act

- a. These general requirements have been reprinted with permission from the office of the Attorney General of the State of Ohio:
  - (1) Local Records Commissions are governed by Ohio Revised Code Section 149.39. The City of Kettering Records Commission meets at least once every six months and upon call of the chairman. The City of Kettering Records Commission is comprised of the following:

Chairman:	City Manager
Secretary:	Records Clerk
Archivist:	Administrative Systems Director
Chief Fiscal Officer:	Finance Director
Chief Legal Officer:	Law Director
Citizen:	Appointed by Chairman

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- (a) The Functions of the Commission shall be to provide rules for retention and disposal of records of the municipal corporation and to review applications for one-time records disposal and schedules of records retention and disposition submitted by municipal offices. Records may be disposed of by the Commission pursuant to the procedures outlined in this policy. The Commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.
  - (b) Every department must designate a single representative as the Departmental Records Officer. The person may be the department head or a capable designee. It should be someone who is familiar with the overall responsibilities of the department and the records it creates and maintains. The Departmental Records Officer will be the contact person for any records-related matters.
- (2) Every public office must maintain its records in accordance with approved records retention schedules, and must not transfer or destroy records without first obtaining proper authorization as provided for by statute.
- (a) Records in the custody of each agency must be retained in accordance with:
    - (i) Laws establishing record retention periods for specific classes of records; and with
    - (ii) Schedules of Records Retention or disposition instructions established by the State Records Administrator for state agencies (see R.C. 121.211) or by the appropriate records commission for local government agencies. *See* R.C. 149.38-42.
  - (b) The City's current records retention schedules are available at the Kettering Government Center, 3600 Shroyer Road, a location readily available to the public as required by section 149.43(B)(2), Ohio Revised Code.
  - (c) Records shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided:
    - (i) By laws establishing limitations for specific classes of records; or
    - (ii) Under rules adopted by the State Records Administrator for state agencies (*see* R.C. 149.331) or by the appropriate records commission for local government agencies. *See* R.C. 149.38-42.

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- (iii) Prior to disposing of records the Departmental Records Officer must prepare a Certificate of Records Disposal for items on the Department's Schedule of Records Retention. Certificates of Records Disposal must be submitted to the Records Clerk before any records are destroyed.
    - (iv) Records which are NOT included on a Schedule of Records Retention and that are no longer being created by the office must be listed on an Application for One-Time Records Disposal and submitted to the City Records Commission for approval. An approved One-Time form only grants authorization to dispose of the specific records listed on it.
  - (3) Every public office must promptly prepare and make available for *inspection* all public records at all reasonable times, during regular business hours. *See* R.C. 149.43 (B). *See also* R.C. 9.01 (where public office keeps information by machine-readable means, such as microfilm, optical disk or electronic or magnetic storage, the public office is required to make "readily available to the public" the equipment necessary to reproduce the information in a readable form). 1989 Op. Att'y Gen. No. 89-042.
  - (4) Upon request, a person responsible for public records shall make *copies* of public records available at cost and within a reasonable amount of time. *See* R.C. 149.43 (B).
  - (5) Every public office must organize its filing system so that its records can be made available for inspection within a reasonable amount of time. *See* R.C. 149.43 (B).
  - (6) The head of each public office must cause to be made *only* such records as are necessary to the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities. *See* R.C. 149.40.
  - b. Requests for clarification should be made to the Law Director or the Administrative Systems Director.
3. The City of Kettering procedure for charging the public for copies of papers, files, documents, maps and prints, etc. is as follows:
- a. The policy for requests from the public for copies of loose or stapled papers shall be to assess a charge of \$.05 per page for letter or legal size black and white documents. If an individual wants a large number of copies of a single document, such as 50 copies of a 9-page report for each member of his/her organization, our response should be that we are willing to make one copy of the 9-page report for our standard charge of \$.45 (9 pages @ \$.05/page), but it will be up to the individual to reproduce that for other members in the organization. In other words, we should not be in the printing/reproduction

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business. For letter or legal size copies color copies the charge shall be \$.10 per page.

- b. If an individual wants copies of electronic records in an electronic format (CD or DVD), the charge shall be \$1.00 per disk.
- c. Reasonable prices are to be established for oversized documents (such as zoning maps, etc.) and documents in other formats (microfilm, photographs, film, audio tapes, or video tapes) and charges should be assessed by each department. These prices shall reasonably represent the actual cost to produce the record.
- d. Copies of certain documents the City produces of interest to the public shall be available to members of the public for their information. Our policy is to place documents on the City's web site [www.ketteringoh.org](http://www.ketteringoh.org).
  - (1) For those individuals who feel the need to own a copy, a purchase price will be made available for sale. This price will reasonably represent the cost to produce the document. In the event all copies produced for sale are sold and an individual wants the City to make a copy for his/her use, the copy charges above will apply.
  - (2) In addition the City will make an effort to provide copies to the public library when the subject of the document would warrant that kind of exposure. In addition to providing two or three copies to each of Kettering's branch libraries, a copy will be made available to the downtown branch, so it can be included in the Dayton/Miami Valley Clearing House. This clearing house provides a central depository for current publications that help promote the Miami Valley area as a place to live and do business.
  - (3) The City may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the City in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.
  - (4) If the City provides some or all of its public records on a website that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the City's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, the City may limit to ten per month the number of records requested by a person that the City will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the City in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.
  - (5) For purposes of 3 and 4 above, "commercial" does not include reporting or gathering news, reporting or gathering information to assist citizen

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oversight or understanding of the operations or activities of government, or nonprofit educational research.

- e. A requester may be required to pay in advance for costs involved in providing the copy. The requester may choose whether to have the record duplicated upon paper, upon the same medium in which the public record is kept, or upon any other medium on which the office determines that the record can reasonably be duplicated as an integral part of the office's normal operations.
- f. If a requester asks that documents be mailed, he or she may be charged the actual cost of the postage and mailing supplies and advance payment may be required. There is no charge for documents e-mailed to the requester.
- g. A key ingredient in making the above policy effective will be the use of judgment on the part of all participants. For example, no charge is to be made to other governmental organizations. It will be the responsibility of each department head to make sure that the appropriate judgment is applied to the administration of this policy.

#### 4. Handling Public Records Requests

- a. No specific language is required to make a request for public records. However, the requester must at least identify the records requested with sufficient clarity to allow the office to identify, retrieve, and review the records. If it is not clear what records are being sought, the office must contact the requester for clarification, and should assist the requester in revising the request by informing the requester of the manner in which the office keeps its public records.
- b. The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. However, the law does permit the office to ask for a written request, the requestor's identity, and/or the intended use of the information requested, but only:
  - (1) If a written request or disclosure of identity or intended use would benefit the requestor by enhancing the office's ability to identify, locate, or deliver the public records that have been requested; and
  - (2) After telling the requestor that a written request is not required and that the requester may decline to reveal the requestor's identity or intended use.
- c. The Law Department has developed a form to be used for public records requests. A sample of this form is attached to this policy. Please note that the form clearly states that "This is not a legal requirement, and the City will make the records available without such identification..." If the requestor refuses to complete the form, the public records shall still be provided to the requestor.

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- d. In processing the request, the office does not have an obligation to create new records or perform new analysis of existing information. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through simple sorting, filtering, or querying. Although not required by law, the office may accommodate the requestor by generating new records when it makes sense and is practical under the circumstances.
- e. In processing a request for inspection of a public record, an office employee must accompany the requester during inspection to make certain original records are not taken or altered.
- f. If the requester makes an ambiguous or overly broad request or has difficulty in making a request for public records, the request may be denied, but the denial must provide the requester an opportunity to revise the request by informing the requester of the manner in which records are maintained and accessed by the office.
  - (1) Any denial of public records requested must include an explanation, including legal authority.
  - (2) If the initial request was made in writing, the explanation must also be in writing.
- g. If portions of a record are public and portions are exempt, the exempt portions may be redacted and the rest released.
  - (1) When making public records available for public inspection or copying, the office shall notify the requestor of any redaction or make the redaction plainly visible.
  - (2) If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

### 5. Electronic Records

- a. Records in the form of computer files, voice-mails, email, text messaging, and instant messaging, including those sent and received via a hand-held communications device are to be treated in the same fashion as records in other formats, such as paper or audiotape.
  - (1) Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All City employees or representatives are required to retain their voice-mails, email records and other electronic records in accordance with applicable records retention schedules.

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The City Manager hereby delegates the appropriate responsibility and authority to administer this Policy to the City's Assistant City Managers and Department Directors.

Approved:

5/15/18  
Date

  
Mark W. Schwieterman, City Manager

Issued:

5/15/18  
Date

  
Sara E. Mills Klein, Director of Human Resource