

**RESOLUTION NO. 051-17**

**A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, REPEALING RESOLUTION NO. 028-14 AND ADOPTING THE AMENDED POLICIES AND PROCEDURES FOR PROCESSING PUBLIC RECORDS REQUESTS**

**WHEREAS**, RCW Sections 42.56.040, 42.56.070 and 42.56.100 of the Public Records Act ("the Act") collectively require that state and local agencies provide, publish and prominently display certain information, exemptions, and rules governing disclosure of public records; and

**WHEREAS**, the City of Port Orchard ("the City") is a local agency as defined in the Act and must therefore comply with its provisions; and

**WHEREAS**, the attached Policies and Procedures for Processing Public Records Requests fulfills the updated requirements that were developed by the Attorney General's Office's advisory summary of House Bills 1595 and 1594 for disclosure of public records; and

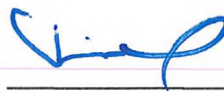
**WHEREAS**, effective July 23, 2017, Chapter 42.56 RCW (Public Records Act) was updated to include additional requirements that the City must follow, and it is the City Council's desire to update and adopt policies and procedures to be consistent with State law; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** Resolution No. 028-14, is hereby repealed in its entirety.

**FURHTER THAT:** The updated "Policies and Procedures for Processing Public Records Requests," attached hereto as Exhibit A are hereby adopted.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and attested by the City Clerk in authentication of such passage this 22nd day of August 2017.



Robert Putaansuu, Mayor

ATTEST:

  
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Brandy Rinearson, CMC, City Clerk

## City of Port Orchard Policies and Procedures for Processing Public Records Requests

Revised 8/22/2017

### 1.0 PURPOSE

The City of Port Orchard ("the City") is committed to open and transparent government consistent with the requirements of the Washington State Public Records Act, which provides citizens with broad rights of access to public records. This document establishes and describes the City's policies and procedures for processing public records requests.

### 2.0 REFERENCES

2.1 Washington State Public Records Act: Ch. 42.56 RCW.

2.2 Port Orchard Municipal Code 1.18.

2.3 Public Records Act – Model Rules: Ch. 44-14 WAC.

### 3.0 DEFINITIONS

3.1 "City" means City of Port Orchard.

3.2 "Employee" means the Mayor, City Council, Department Directors, and all other staff.

3.3 "Exempt" means that a law allows or requires the withholding of a record, or a portion thereof, from disclosure.

3.4 "Fullest assistance" means a timely and thorough action and response to a public records request.

3.5 "Public Records Officer" means the person designated by the City Council responsible for processing public records requests received by the public; and is the person responsible for establishing Public Records Act process for the City and assisting departments with public records requests and responses. See POMC 1.18.020.

3.6 "Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the City regardless of physical form or characteristics. (See 3.11 for definition of writing.) See City's Personnel Policy Manual Chapter 9, *City Property and Public Records* regarding City business on personal computers, cell phones, and other means of personal communication devices. This definition does not include records that are not otherwise required to be retained by the City and are held by volunteers who:

- (a) Do not serve in an administrative capacity;
- (b) Have not been appointed by the agency to an agency board, commission, or internship; and
- (c) Do not have a supervisory role or delegated City authority.

3.7 "Public Records Coordinator" ("coordinator") means the staff person(s) designated by a department to lend leadership, support, and assistance to the public records officer.

3.8 "Public Records Request Tracking System" ("Tracker") refers to the software application that catalogs all public records requests and the status of responses for the City.

3.9 "Redact" refers to the method of protecting from public viewing the portion of a record that is statutorily exempt from public disclosure.

3.10 "Withholding log" is a list of records or portions thereof that are responsive to a public records request but are exempt from disclosure, together with a reference to the specific statutory exemption and a brief explanation as to why the record or portion thereof is being withheld.

3.11 "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

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#### **4.0 RESPONSIBILITIES**

4.1 All employees are responsible for:

- (a) Forwarding immediately all requests for public records to the public records officer for processing in accordance with the procedures outlined in this policy.
- (b) Saving all public records in accordance with the State's record retention schedule, whether the record is created on a city computer or otherwise.
- (c) Maintaining all public records in their original format, and making them available to the public records officer upon request.
- (d) Ensure Public Records Act training is completed within the guidelines set by the State.

4.2 All employees shall follow the procedures outlined in this policy. Penalty for violation is outlined in the Personnel Policies Manual Chapter 10.1.

4.3 All departments are responsible for:

- (a) Designating one or more public records coordinator(s).
- (b) Establishing protocols for processing public records requests in the absence of the designated public records coordinator.

(c) Ensuring that the public records coordinator receives public records training outside of the City and/or administered by the public records officer.

4.4 The public records coordinator is responsible for:

(a) Accepting requests for disclosure of public records that are routine in nature. Routine requests are defined in Section 6.6 of this policy.

(b) Processing requests in accordance with the disclosure requirements of RCW 42.56.580, in a manner reasonably calculated to provide notice to the public.

(c) Assisting in identifying sources of responsive records and facilitating thorough collection of records.

(d) Assisting in planning, managing, and reviewing completion of requests.

(e) Alerting the public records officer of public records requests that are unusually large or that affect more than one department.

4.5 The public records officer is responsible for:

(a) Accepting requests for disclosure of public records.

(b) Oversee the City's compliance with the disclosure requirement of RCW 42.56.580 in a manner reasonably calculated to provide notice to the public.

(c) Providing instructions to departments on the Public Records Act and the procedures described in this policy.

(d) Assisting departments with public records requests that are unusually large or that affect more than one department.

(e) Providing notice to third parties, as needed.

(f) Providing the requestor with responses and a withholding/redaction log, if needed.

(g) Developing and providing training for public records coordinators.

(h) Developing and maintaining resources for public records coordinators, such as the Public Records Manual.

(i) Ensuring prompt review of decisions denying inspections of records. RCW 42.56.520.

## **5.0 POLICY**

5.1 Departments shall make available for inspection and copying all nonexempt public records in accordance with the Washington State Public Records Act.

5.2 Providing fullest assistance. The City shall provide the “fullest assistance” to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the City.

## **6.0 PROCEDURES**

6.1 Public records requests are encouraged to be made to the City’s Public Records Center on the City’s website or in writing to the public records officer. Oral requests will be accepted, and the substance will be promptly confirmed in writing to the requestor. The City’s public records request form shall be available on the City’s website.

6.2 In the event that requested records contain information that affects third parties, the public records officer may, before providing the records, give notice to affected persons in accordance with RCW 42.56.540. The notice shall include a copy of the request.

6.3 If a department believes that a record or any part of a record is exempt from disclosure, the public records officer shall provide to the requestor a written communication identifying the record or portion withheld, the specific exemption relied upon and the authority for the exemption, and briefly explaining how the exemption applies to the record or portion withheld, including enough information for a requester to make a threshold determination of whether the claimed exemption is proper. If only portions of a record are exempt from disclosure, the public records officer shall redact the exempt portions and provide the nonexempt portions. The documentation described in this section should be presented in the form of a withholding log.

6.4 A requestor may choose to have copies of records made instead of inspecting them. Charges for photocopies or electronically produced copies shall be made in accordance with RCW 42.56.070 and .120. and POMC 1.18.070. The department may require a deposit of up to ten percent of the estimated costs of copying all the records.

6.5 If the requestor chooses to inspect records before deciding whether to have copies made, the department shall promptly provide space for inspection during regular business hours except when and to the extent it would cause excessive interference with other essential functions or unreasonably disrupt operations. A department employee will observe and document the inspection. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor may indicate which records he or she wishes to have the department copy.

6.6 Routine requests are those in which the documents are available on the City’s website, such as minutes, Ordinances, Resolutions, permits, or other documents routinely produced and readily available for review. All requests not otherwise identified as large or complex shall be considered routine requests and will be handled in the normal course of business

consistent with these policies and without undue delay caused by the processing of large or complex requests.

6.7 Non-routine, large, or complex requests are those in which: 1) there is a question about disclosure, in whole or in part; 2) the information requires more than a few minutes to compile; or 3) the records requested come from more than one department or source.

In making this determination, the public records officer or designee should consider relevant factors including, but not limited to:

- a) the general, expansive, or all inclusive nature of the request;
- b) the number of departments involved;
- c) the location of records and available method of searching records;
- d) the potential number of records implicated;
- e) the rights of third parties;
- f) the need for clarification of the request;
- g) administrative tasks necessary to process the request;
- h) the amount of time needed to review documents for applicable exemptions;
- i) the need for legal review of the public records request; and
- j) the format of relevant records.

6.8 When the request is for a large number of records, the public records officer shall provide access for inspection and copying in installments, if applicable.

6.9 Public records requests will be handled in the order it is received. Should there be multiple requests by the same requestor, the request that was first received will be processed first and the other requests will be started after the previous request is complete.

6.10 Public records requests are an essential function of the City Clerk's office. The City finds it reasonable to dedicate no more than twenty (20) percent of the department's time responding to public records requests. The amount defined is based on the amount of other core responsibilities outlined in their job descriptions.

6.11 A requestor may always choose to narrow or clarify a large or complex request. A requestor may always make a new public records request that more specifically identifies records needed and otherwise qualifies as a routine request, rescinding their narrow or complex request. Requestors are encouraged to consider the needs of others and utilize the public records request process responsibly.

6.12 If, within thirty (30) days after notification that records are available for inspection or copying, the requestor fails to inspect the entire set of records or one or more of the installments, as applicable, the department may close the request and re-file the records. The requestor shall be notified in writing of this action.

6.13 If, after informing the requestor that all responsive records have been provided, the public records officer notifies the requestor that additional responsive records existed at the time of the request, it shall promptly inform the requestor of the additional records, provide a brief explanation of the circumstances, and provide them on an expedited basis.

6.14 Departments shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose of the request unless necessary to determine whether an exemption applies or whether a list of individuals is being requested for commercial purposes.

6.15 Any person who objects to the initial denial or partial denial of a public records request may petition in writing to the public records officer for a review of the decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer denying the request. The public records officer shall promptly consider the petition and either affirm or reverse the denial within two business days following receipt of the petition.

## **7.0 PROCESSING PUBLIC RECORDS REQUESTS**

7.1 Receive request for public records. If request is oral, provide written confirmation to requestor.

7.2 Date stamp the request. Log the request into Tracker, including date of receipt, the specific records requested, detailed notes about each communication with the requestor, staff time spent on researching the request, and date closed.

7.3 Within five (5) business days of receipt of the request, do one or more of the following:

(a) Make the records available for inspection or copying;

(b) Provide an Internet address and link on the city's website to the specific records request, unless the requestor notifies the agency they cannot access the records through the Internet, then the city must provide copies of the record or allow the requestor to view the copies. If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor. The per page cost is defined in RCW 42.56.120;

(c) Acknowledge the request and provide to the requestor a reasonable estimate of when the City will respond to the request;

(d) Acknowledge the request and ask for clarification of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of the time needed to respond to the request if it is not clarified;

(e) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. The clarification may be requested and provided by telephone, in which case make a written record of the clarification. If the requestor fails to respond to the request to clarify and the entire request is unclear, the City may not respond to the request. Otherwise the City will respond to the portions of the request that are clear; or

(f) Deny the request, notify the requestor of the denial, and provide a written statement of the specific reasons for the denial.

7.4 If applicable, provide notice to third parties whose rights may be affected by the disclosure.

7.5 If a request is from a labor union representing City employees, review the request with the Human Resources Coordinator.

7.6 If a request is from a media representative, review the request with the public information officer.

7.7 Identify and collect responsive records, and document steps taken.

7.8 Identify exemptions, if any, and redact or withhold exempt documents after consulting with the public records officer as needed. See section 8.o.

7.9 Prepare withholding log, if applicable. A withholding log includes a description of the specific record; the date of the record; the author; the subject; to whom the record is addressed and copied; the number of pages, the statutory exemption being applied; and a brief explanation of how the exemption applies to the record. The recommended format for a withholding log is available in the Public Records Manual.

7.10 If the requestor wishes to receive copies without prior inspection, make arrangements for payment and provide copies.

7.11 If the requestor seeks inspection, arrange for inspection at a time mutually agreed upon by the requestor and the department. Designate an employee to observe and document the inspection.

7.12 After inspection is complete, make requested copies or arrange for copying. Large copying requests can be completed by an outside copying vendor.

7.13 Notify the requestor that the request is closed when:

(a) A diligent search for the requested records has been made and all responsive records have been produced and, if applicable, a withholding log has been provided;

(b) A requestor has not, within thirty (30) days of notification that records are available for inspection or copying, inspected or requested copies of the records;

(c) A requestor has not, within thirty (30) days of notification that copies have been made, claimed and paid for copies; or

(d) A requestor has not, within thirty (30) days of a request for clarification, provided clarification.

7.14 The public records officer will work with the City Attorney on any petitions of denials or partial denials.



## 8.o EXEMPTIONS

The Act provides that a number of records are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Additional statutes may exempt public records from disclosure include but are not limited to:

RCW 2.64.111 Documents regarding discipline/retirement of judges  
RCW 2.64.113 Confidentiality- violations  
RCW 4.24.550 Information on sex offenders to public  
RCW 5.60.060 Privileged communications  
RCW 5.60.070 Court-ordered mediation records  
RCW 7.68.140 Victims<sup>1</sup> compensation claims  
RCW 7.69A.030(4) Child victims and witnesses- protection of identity  
RCW 7.69A.050 Rights of child victims and witnesses - addresses  
RCW 7.75.050 Records of Dispute Resolution Centers  
RCW 9.51.050 Disclosing transaction of grand jury  
RCW 9.51.060 Disclosure of grand jury deposition  
RCW 9.02.100 Reproductive privacy  
RCW 9A.82.170 Financial institution records- wrongful disclosure  
RCW 10.27.090 Grand jury testimony/evidence  
RCW 10.27.160 Grand jury reports- release to public only by judicial order  
RCW 10.29.030 Organized crime special inquiry judge  
RCW 10.29.090 Records of special inquiry judge proceedings  
RCW 10.52.100 Records identifying child victim of sexual assault  
RCW 10.77.210 Records of persons committed for criminal insanity  
RCW 10.97.040 Criminal history information released must include disposition  
RCW 10.97.050 Conviction and criminal history information  
RCW 10.97.060 Deletion of certain criminal history record information, conditions  
RCW 10.97.070 Disclosure of identity of suspect to victim  
RCW 10.97.080 Inspection of criminal record by subject  
RCW 13.32A.090 Crisis residential centers notice to parent about child  
RCW 13.34.115 Court dependency proceedings  
RCW 13.40.217 Juveniles adjudicated of sex offenses - release of information  
RCW 13.50.010 Maintenance of and access to juvenile records  
RCW 13.50.050 Juvenile offenders  
RCW 13.50.100 Juvenile/children records not relating to offenses  
RCW 13.60.020 Missing children information  
RCW 13.70.090 Citizen juvenile review board- confidentiality  
RCW 15.120.050 Industrial hemp research program  
RCW 18.04.405 Confidentiality of information gained by CPA  
RCW 18.19.060 Notification to clients by counselors  
RCW 18.19.180 Confidential communications with counselors  
RCW 19.02.115 Licensing Information  
RCW 19.215.020 Destruction of personal health and financial information  
RCW 19.215.030 Compliance with federal rules  
RCW 26.04.175 Name and address of domestic violence victim in marriage records  
RCW 26.12.170 Reports of child abuse/neglect with courts  
RCW 26.23.050 Child support orders  
RCW 26.23.120 Child support records

RCW 26.26.041 Uniform Parentage Act - protection of participants  
RCW 26.26.450 Confidentiality of genetic testing  
RCW 26.33.330 Sealed court adoption Records  
RCW 26.33.340 Agency adoption records  
RCW 26.33.343 Access to adoption records by confidential intermediary  
RCW 26.33.345 Release of name of court for adoption or relinquishment  
RCW 26.33.380 Adoption - identity of birth parents confidential  
RCW 26.44.010 Privacy of reports on child abuse and neglect  
RCW 26.44.020(19) Unfounded allegations of child abuse or neglect  
RCW 26.44.030 Reports of child abuse/neglect  
RCW 26.44.125 Right to review and amend abuse finding- confidentiality  
RCW 27.53.070 Records identifying the location of archaeological sites  
RCW 29A.08.720 Voter registration records- place of registration confidential  
RCW 29A.08.710 Voter registration records- certain information exempt  
RCW Chapter 40.14 Preservation and destruction of public records  
RCW 42.23.070(4) Municipal officer disclosure of confidential information prohibited  
RCW 42.41.030(7) Identity of local government whistleblower  
RCW 42.41.045 Nondisclosure of protected information (whistleblower)  
RCW 46.52.080 Traffic accident reports - confidentiality  
RCW 46.52.083 Traffic accident reports - available to interested parties  
RCW 46.52.120 Traffic crimes and infractions- confidential use by police and courts  
RCW 46.52.130(2) Abstract of driving record  
RCW 46.61.506 BAC and blood test results  
RCW 48.02.065 Insurance commissioner  
RCW 48.62.101 Local government insurance transactions - access to information  
RCW 50.13.060 Access to employment security records by local government agencies  
RCW 50.13.100 Disclosure of non-identifiable information or with consent  
RCW 51.28.070 Workers compensation records  
RCW 51.36.060 Physician information on injured workers  
RCW 60.70.040 No duty to disclose record of common law lien  
RCW 68.50.105 Autopsy reports  
RCW 68.50.320 Dental identification records - available to law enforcement agencies  
RCW Chapter 69.50 Uniform controlled substance  
RCW Chapter 70.02 Medical records - access and disclosure - entire chapter.  
RCW 70.05.170 Child mortality reviews by local health departments  
RCW 70.24.022 Public health agency information regarding sexually transmitted disease investigations - confidential  
RCW 70.24.024 Transcripts and records of hearings regarding sexually transmitted diseases  
RCW 70.24.105 HIV/STD records  
RCW 70.28.020 Local health department TB records - confidential  
RCW 70.48.100 Jail records and booking photos  
RCW 70.58.055 Birth certificates - certain information confidential  
RCW 70.58.104 Vital records, research confidentiality safeguards  
RCW 70.96A.150 Alcohol and drug abuse treatment programs  
RCW 70.123.075 Client records of domestic violence programs  
RCW 70.125.065 Records of rape crisis centers in discovery  
RCW 71.05.390 Information about mental health consumers  
RCW 71.05.395 applies to mental health records  
RCW 71.05.400 Information to next of kin or representative  
RCW 71.05.425 Notice of release or transfer of committed person after offense dismissal

RCW 71.05.427 Information that can be released  
RCW 71.05.430 Statistical data  
RCW 71.05.440 Penalties for unauthorized release of information  
RCW 71.05.445 Release of mental health information to Dept. of Corrections  
RCW 71.05.620 Authorization requirements and access to court records  
RCW 71.05.630 Release of mental health treatment records  
RCW 71.05.640 Access to treatment records  
RCW 71.05.650 Accounting of disclosures  
RCW 71.24.035(5)(g) Mental health information system  
RCW 71.34.200 Mental health treatment of minors  
RCW 71.34.210 Court records for minors related to mental health treatment  
RCW 71.34.225 Release of mental health services information  
RCW 71A.14.070 Records regarding developmental disability  
RCW 72.09.345 Notice to public about sex offenders  
RCW 72.09.585(3) Disclosure of inmate records to local agencies  
RCW 73.04.030 Veterans discharge papers  
RCW 74.04.060 Applicants and recipients of public assistance  
RCW 74.04.520 Food stamp program confidentiality  
RCW 74.09.900 Medical assistance  
RCW 74.13.121 Financial information of adoptive parents  
RCW 74.13.280 Children in out-of-home placements  
RCW 74.20.280 Child support enforcement - local agency cooperation, information  
RCW 74.34.095 Abuse of vulnerable adults - confidentiality of investigations and reports.  
RCW 82.32.330 Disclosure of tax information  
RCW 84.36.389 Confidential income data in property tax records held by assessor  
RCW 84.40.020 Confidential income data supplied to assessor regarding real property  
18 USC Sec 2721 Driver's Privacy Protection Act  
20 USC§ 1232g Family Education Rights and Privacy Act  
42 USC 290odd-2 Confidentiality of Substance Abuse Records  
42 USC 405(c)(2)(vii)(I) Limits on Use and Disclosure of Social Security Numbers.  
42 USC 654(26) State Plans for Child Support  
42 USC 671(a)(8) State Plans for Foster Care and Adoption Assistance  
42 USC 1396a(7) State Plans for Medical Assistance  
5 USR Sec. 552(a) Social Security Numbers  
7 CFR 272.1(c) Food Stamp Applicants and Recipients  
28 CFR Sec. 513.20(b) FBI and WA Rap sheet  
34 CFR 361.38 State Vocational Rehabilitation Services Programs  
42 CFR Part 2 (2.1-2.67) Confidentiality of Alcohol and Drug Abuse Patient Records  
42 CFR 431.300-307 Safeguarding Information on Applicants and Recipients of Medical Assistance  
42 CFR 483.420 Client Protections for Intermediate Care Facilities for the Mentally Retarded  
42 CFR 5106a(b)(2)(A) Grants to States for Child Abuse and Neglect Prevention and Treatment Programs  
45 CFR 160-164 HIPAA Privacy Rule