

**CITY OF ORTING
WASHINGTON
RESOLUTION NO. 2017-26**

ORIGINAL

**A RESOLUTION OF THE CITY OF ORTING,
WASHINGTON, RELATING TO COMPLIANCE WITH
THE PUBLIC RECORDS ACT, ISSUING A FORMAL
DETERMINATION PURSUANT TO RCW 42.56.120, AND
ADOPTING A PUBLIC RECORDS POLICY AND FEE
SCHEDULE FOR PRODUCTION OF PUBLIC RECORDS;
SETTING AN EFFECTIVE DATE.**

WHEREAS, the City of Orting is a local agency as defined in Ch. 42.56 RCW, commonly referred to as the Washington Public Records Act, and must therefore comply with its provisions; and

WHEREAS, the City Council's Community and Government Affairs Committee has prepared, reviewed and considered proposed rules governing the processing of requests for public records, in accordance with the aforementioned authority; and

WHEREAS, pursuant to RCW 42.56.120, the City may charge record requestors its actual costs for production of records, unless it finds doing so would be unduly burdensome;

WHEREAS, alternatively, the City may charge the fees within the framework set out in RCW 42.56.120, but only after an affirmative finding that calculating actual costs would be unduly burdensome;

WHEREAS, in order to maintain the efficient operation of City administration and meet the City's obligations under the Public Records Act, the City Council desires to adopt a policy governing the City's administrative processing of requests for public records, and to authorize staff to charge the fees set out in state law; and

NOW, THEREFORE, the City Council of the City of Orting, Washington, do resolve as follows:

Section 1. Determination of Actual Costs Unduly Burdensome. The City Council of the City of Orting finds that it would be unduly burdensome for the City to calculate the actual per page costs for processing public records requests. The actual costs can include all of the following, the calculation of which would be unduly burdensome for staff: (1) all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment; (2) all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; (3) any general administrative or overhead charges that are directly related to the actual cost of copying the public records; and (4) Staff time to copy and mail the requested

public records may be included in an agency's costs. Calculating these amounts would slow the efficient operation of City administration and therefore would be unduly burdensome.

Section 2. Adoption of Policy No. 2017-03, Pertaining to Public Records. The City Council adopts Policy No. 2017-03, pertaining to public records, attached hereto as Exhibit A and incorporated herein by reference, including the fee schedule set out therein, as authorized by RCW 42.56.120.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Resolution, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Resolution be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Resolution or its application to other persons or circumstances.

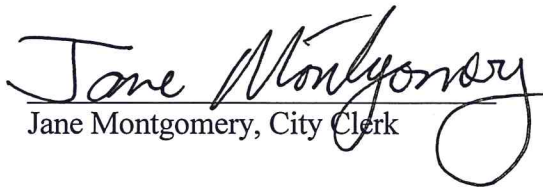
Section 4. Effective Date. This Resolution shall take effect and be in full force immediately upon its passage.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 13th DAY OF December, 2017.

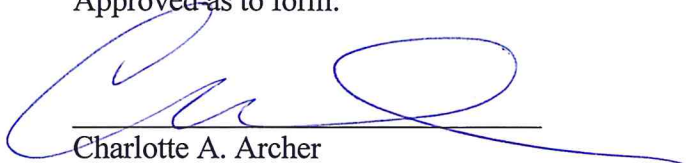
CITY OF ORTING


Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:


Jane Montgomery, City Clerk

Approved-as to form:


Charlotte A. Archer
Kenyon Disend, PLLC
City Attorney



City of Orting
Policy No. 2017-3
Public Records Requests – Receipt, Processing and Fees

I. PURPOSE

To provide direction regarding the processes and procedures for public records requests.

RCW 42.56, the Public Records Act (the "Act"), requires public agencies to make identifiable, non-exempt public records available for inspection and copying upon request and to publish rules of procedure to inform the public how access to public records will be accomplished. The purpose of the Act is to provide the public full and timely access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of efficient administration of the City of Orting. The City of Orting is committed to providing full access to public records in accordance with the Act.

Except where these guidelines are mandated by statute, the guidelines in this policy are discretionary and advisory only and shall not impose any affirmative duty on the City. The City reserves the right to apply and interpret this policy as it sees fit, and to revise or change the policy at any time. Failure to comply with any provision of this Policy shall not result in any liability imposed upon the City other than as set forth in the Act.

II. REFERENCES

RCW 42.56 - Public Records Act
WAC 44-14 - Public Records Act - Model Rules
RCW 40.14 - Preservation and Destruction of Public Records
Administrative Policy - 400-04, Records Management, Retention and Archives
Local Government Common Records Retention Schedule (CORE), Version 4.0 (May 2017)

III. DEFINITIONS

- a. *The City of Orting.* "The City of Orting" and "the City" includes any office, department, division, bureau, board, commission or agency of the City of Orting.

- b. *Identifiable record.* An identifiable record is one in existence at the time the public records request is made and that City staff can reasonably locate.
- c. *Public record.* A writing, regardless of physical form, 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.
- d. *Writing.* Broadly defined, a writing means handwriting, typewriting, printing, photostating, photographing, and any other means of recording any form of communication, including, but not limited to, letters, words, pictures, sounds or symbols or their combinations; papers; maps; magnetic or paper tapes; photographic films and prints; motion picture, film and video recordings; magnetic or punched cards; discs, drums, and diskettes; sound recordings; and other documents including data compilations from which information may be obtained or translated. An e-mail is a "writing."
- e. *E-mail.* Electronic mail is an informational transfer system that uses computers for sending and receiving messages. Classification of e-mails as public records is dependent on the content of the message. E-mail messages are public records when they are created or received in the transaction of public business and retained as evidence of official actions.
- f. *Public Records Officer.* The City Clerk is the Public Records Officer for the City of Orting. The Public Records Officer will coordinate responses to public records requests with the departments, and oversee compliance with the Public Records Act, but may designate other City staff members to process requests for public records.
- g. *Exempt record.* Exempt record includes all agency records that are specifically exempted or prohibited from disclosure by state or federal law, either directly in RCW 42.56 or other statutes.

IV. PROCEDURES

A. Making a Request.

1. Public Records Officer. Any person requesting access to public records or seeking assistance in making such a request must contact the Public Records Officer at:

City Clerk/Public Records Officer
 Orting City Hall
 110 Train St SE
 Mailing Address:
 PO Box 489
 Orting, WA 98360
 Phone: (360) 893-2219 Ext. 133
 Email: jmontgomery@cityoforting.org
 Hours: 9am – 5pm Monday - Friday

2. Request Format. While there is no specific required format for a public records request, a requestor must provide the City with reasonable notice that the request being made is for public records. If a request is contained in a larger document unrelated to a public records request, the requestor should point out the public records request by labeling the front page of the document as containing a public records request, or otherwise calling the request to the attention of the Public Records Officer to facilitate timely response to the request.

The City encourages that all requests for public records be made in writing on a Public Records Request Form, which is available at City Hall and on the City of Orting's website <http://cityoforting.org/wp-content/uploads/2012/02/Request-for-Public-Records-FormREVISED-071515.pdf>. Requests may be submitted in person, by mail, fax, e-mail, or orally (see section regarding "Oral Requests"). Mail, e-mail and faxes will be considered received on the date the form is stamped "received," not on the date sent.

Requests should include the following information to facilitate processing:

- A. The requestor's name, e-mail and/or mailing address, and/or contact phone number;
- B. The date of the request;
- C. The nature of the request, including a detailed description of the public record(s) adequate for the city personnel to be able to identify and locate the records;
- D. A statement regarding whether the records are being requested for a commercial purpose (RCW 42.56.070 (9)); and
- E. Whether the requestor desires copies, or to inspect the requested records and preferred method of receiving responsive records.

3. Oral Requests. An oral request does not memorialize the exact records sought and therefore prevents a requestor or the City from later proving what was included in the request. Furthermore, as described in WAC 44-14-04002(1), a requestor must provide the City with reasonable notice that the request is for the disclosure of public records; oral requests, especially to City staff other than the public records officer or designee, may not provide the City with the required reasonable notice. Therefore, requestors are strongly encouraged to make written requests. If the City receives an oral request, the City staff person receiving it should immediately reduce it to writing and then verify in writing with the requestor that it correctly memorializes the request.

B. Processing Requests.

1. Response to Requests. The City will process requests in the most efficient manner as the Public Records Officer deems appropriate. In an effort to better understand the request and provide all responsive records, the Public Records Officer can inquire about the purpose for the request but the requestor is not required to answer, except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits production of specific information or records to certain persons.

a. Acknowledging receipt of request, pursuant to RCW 42.56.520. Within five business days of receipt of the request, not including the day the request was received as provided by RCW 42.56.520, the Public Records Officer will do one or more of the following:

1. Make the records available for inspection or copying;

2. Acknowledge the request and provide a reasonable estimate of the time needed to respond to the request and a date by which the records will be produced in whole or in part depending on whether the records are being provided in installments. Additional time to respond may be necessary under the following circumstances:

a. to request clarification from the requester if the request is unclear or does not sufficiently identify the requested records (see --Requesting Clarification-- section);

b. to locate and assemble the records requested;

c. to notify third persons or agencies affected by the request in the event the requested records contain information that may affect rights of others and may be exempt from production pursuant to RCW 42.56.540.

i. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy or summary of the request (WAC 44.14.040);

ii. Nothing in this policy is intended to, nor does it create, any right to such notice.

d. to determine whether any of the information requested is exempt from production and to redact such information and prepare an exemption log. Should an extension of time be necessary to fulfill the request, the Public Records Officer will provide a revised estimate and explain the changed circumstances that make it necessary.

3. Deny the request. Any denials of requests, in whole or in part, for public records will be accompanied by a written statement specifying the reason(s) for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. RCW 42.56.210(3)

2. Identifiable Record. A requestor must request an “identifiable record” or “class of records” before the City must respond. The Act does not allow a requestor to search through City files for records which cannot be reasonably identified or described to the City.

3. Requesting Clarification. In acknowledging receipt of a public record request that is unclear, the City may ask the requestor to clarify what information the requestor is seeking. Additionally, clarification may be sought in the following, non-exhaustive, circumstances:

a. To determine the specific date or date range of records sought, if known.

b. To ask a requestor to prioritize the records he or she is requesting so that the City is able to provide the most important records first. The City is not required to ask for prioritization, and a requestor is not required to provide it.

c. To clarify requests for identified in vague terms such as “any and all documents related to;” “all records relating to;” or similar language. If the requestor is unable or unwilling to help narrow the scope of the documents being sought in order to expedite the City’s response and/or reduce the volume of potentially responsive documents, the Public Records Officer may err on the side of producing more rather than fewer documents in response to such a broad, general request. City staff shall not be obligated to interpret such a broad, general request in order to decipher which specific documents may be of interest to the requestor and the Act does not allow a requestor to search through the City’s files for records which cannot be identified or described to the City.

Such clarification may be requested and provided by telephone. If the clarification is made by telephone, the PRO will confirm the scope of the clarification in writing. The confirmation will be deemed the correct statement of the scope of the request unless the requestor responds with a different statement of the scope.

If the requestor fails to clarify the request within 30 days, the City may consider the request abandoned. RCW 42.56.520; WAC 44-14-04003(7). If the City considers the request abandoned, it should send a closing letter to the requester. WAC 44-14-04003(7).

5. Providing Records in Installments. When the request is for a large number of records, the City may provide access for inspection and copying in partial installments if reasonably determined that it would be practical to provide the records in that way. If the requestor does not contact the Public Records Officer within thirty (30) working days to arrange for the review of the first installment, the City may deem the request abandoned and may stop fulfilling the remainder of the request. The City is not required to process all requests to completion in the order that they are received. Rather, the City may prioritize requests in order to provide for the most expeditious processing of all requests. RCW 42. 56.120. If the requestor has found the records he or she is seeking and no longer desires to receive any remaining installments

yet to be produced, the requestor should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.

6. Electronic records. The process for requesting electronic public records is the same as the process for requesting paper public records. When a requestor requests records in an electronic format, if technically feasible, the Public Records Officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the City and is generally commercially available, or will provide the records in a format that is reasonably translatable from the format in which the agency keeps the record. For records in which the City only has a paper copy of the record, the City may scan the record into an Adobe Acrobat PDF file at the requestor's request and expense as outlined in the City's Fee Schedule.

7. Records Delivery. The City offers the following four methods for obtaining responsive records.

a. Inspection.

b. Paper copies.

c. E-mail. For requests or installments which have a very low volume of responsive electronic records, the records may be sent by e-mail as an attachment. Responsive records, including complete or partial installments, will not be e-mailed if determined, in the City's sole discretion, that doing so will excessively interfere with other essential City functions or unreasonably disrupt the operations of the City.

d. CD/DVD. Requests/installments which have a large volume of responsive records will be delivered in one or more installments will be copied onto a CD/DVD. CDs/DVDs can be either picked up in person or sent by United States mail and will be provided at the cost as stated in the City's Fee Schedule.

8. No Duty to Create Record. This policy does not require the City to answer written questions, summarize data or information, create new public records, or provide information in a format that is different from original public records; however, the City may in its discretion, create such a new record to fulfill the request where it may be easier for the City to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request. WAC 44-14-04003(5).

9. No Duty to Provide Information. This policy does not require the City to respond to requests for information, research, opinions or advice. Requests for information, research, opinions, advice, or similar requests will not be responded to pursuant to this policy.

10. No Duty to Supplement Responses. The City is not obligated to hold current records requests open to respond to requests for records that may be created in the future. A new request must be made to obtain later-created public records.

C. Charges for Providing Copies of Public Records.

Per state law, the City is not allowed to charge for locating a public record or for making records available for review or inspection. The City may charge for the costs of copying/scanning and transmitting public records, including the staff time spent making the copies/scans.

1. Fee Schedule.

Paper records: The charge for standard size (8 ½ x 11) black and white photocopies is \$0.15 per single-sided page and \$0.30 per double-sided page. Actual costs of reproduction of off-size or color copies and non-standard formats such as photographs or blueprints will be billed directly to the requestor.

2. Electronic Records.

Default fees per the Public Record Act: The City shall follow the default fee structure outlined in the Public Records Act as it has determined the calculating the actual costs of producing electronic records would be unduly burdensome when considering the various classification levels, including benefits and wages, of staff throughout the City involved in fulfilling public records requests, and the diverse nature of requests received.

The City may \$0.05 for each four electronic files or attachments uploaded for electronic delivery, and \$0.10 per gigabyte for the transmission of records in an electronic format or for the use of City equipment to send the records electronically.

Alternatively, the City may charge a flat fee of up to \$2.00 for the entire request as long as the cost of uploading and transmitting the electronic-records is reasonably estimated to equal or exceed that amount. Only one \$2.00 flat fee per request is authorized for electronic records produced in installments.

When records are provided electronically on a CD, DVD, thumb drive, flash drive, or other electronic device, the requestor will be charged for the cost of the electronic storage device.

The City may charge an actual-cost service charge for requests that require use of IT expertise to prepare data compilations or provide customized electronic access services when not used by the City for other purposes. A cost estimate and explanation will be provided to the requestor before incurring the costs.

3. Scanning Paper Documents. If a requestor asks for responsive paper records to be converted to an electronic format, such as PDF, the cost of \$0.10 per page will be assessed to scan the paper records, in addition to delivery costs.

4. Option to Waive Charges. The City may waive charges associated with fulfilling a request. The decision will be based on various factors, including the volume and format of the responsive documents. The decision to assess fees for fulfilling a public records request

shall be made on a consistent and equitable basis, dependent primarily upon the amount of staff time required for copying, scanning, shipping, uploading, and/or transmitting the records associated with fulfilling a request.

5. Certified Copies. If the requestor is seeking a certified copy of the City record, an additional charge of \$1.00 per each complete document may be applied to cover the additional expense and time required for certification.

6. Mailing Charges. The City will charge actual costs, to include the mailing container and postage associated with the mailing of packages to the requestor.

7. Deposit. The City may require a deposit of up to ten percent (10%) of the estimated cost of copying records prior to copying any records for a requestor. The City shall also require payment of the remainder of the cost before providing all of the records, or the payment of the costs of copying an installment before providing that installment. RCW 42.56.120

V. Additional Provisions.

1. Preservation of Public Records. No member of the public may remove a public record from City Hall without the City's permission. No member of the public may remove a public record from a viewing area, disassemble, or alter, fold, mark, deface, tear, damage or destroy any public record. Public records maintained in a file jacket or binders, or in chronological order, may not be dismantled except for the purpose of copying, and then only by City staff. Copies of public records may be copied only on copying machines of the City unless other arrangements are made by the Public Records Officer. No food or drink will be permitted during the inspection of public records. Access to file cabinets, shelves, vaults and other City storage areas is restricted to authorized City staff.

2. Loss of Right to Inspect. Inspection shall be denied and the records withdrawn by the Public Records Officer if the requestor, when reviewing the records, acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the City.

3. Organization of Public Records. The City finds that maintaining an index as provided in RCW 42.56.070(3) for use by the public would be unduly burdensome and would interfere with agency operations given the high volume, various locations, and types of public records received, generated and otherwise acquired by the City. RCW 42.56.070(4). Notwithstanding the foregoing, the City will maintain its records in a reasonably organized manner and take reasonable actions to protect records from damage and disorganization.

4. Closing Abandoned or Unpaid Requests. If the requestor withdraws the request, fails to fulfill his or her obligations to inspect the records within thirty (30) days of notice that the records are available for inspection, or fails to pay the deposit, installment payment or final

payment for the requested copies, City personnel will close the request. City personnel will document closure of the request and the conditions that led to closure. RCW 42.56.120.

5. Records Exempt from Public Disclosure. The City is not required to permit public inspection and copying of records for which public disclosure of the record is prohibited, restricted or limited by state law or federal statute or regulation. The City is prohibited by statute from disclosing lists of individuals for commercial purposes. RCW 42.56.070(9)

The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. RCW 42.56.230 through 42.56.480 contains a large number of exemptions from public inspection and copying. Other statutes outside the Public Records Act may prohibit and exempt disclosure of certain documents or information. *See* RCW 42.56.070(1).

If a record is wholly or partially exempt from production and should be withheld or redacted, the Public Records Officer will state the specific exemption and provide a brief explanation of how the exemption applies to the record being withheld or redacted on an exemption log. This explanation should be sufficient to enable the requestor to make a threshold determination of whether the claimed exemption is proper

6. Mechanism for Review of Denial. Any person who objects to the denial of a public records request may petition in writing to the Public Records Officer for a review of that decision within five business days of the date of the denial. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request and the basis for the requester's challenge to the denial. The Public Records Officer shall perform a review of the denial as promptly as possible. Pursuant to state law, the review shall be deemed concluded at the end of the second business day following the denial to represent final action for the purposes of judicial review. RCW 42.56.530. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

7. Retention of Records. The City follows RCW Ch. 40.14, Preservation and Destruction of Public Records, in the retention and destruction of public records. The Secretary of State, State Archives Committee approves a general retention schedule for local agency records (including cities) common to most agencies. The retention schedule for local agencies is available at www.secstate.wa.gov/archives. Retention schedules for documents vary based on the content of the record. WAC 4414-03005.

The City Clerk will index and maintain the following general administrative records in the City Clerk's Office to make them available for public inspection and copying:

- Ordinances
- Resolutions
- Minutes of the City Council

- City Council Agenda Packets
- Active Contracts and Agreements
- Active Interlocal Agreements

Records that relate to the specific function or responsibility of a specific department shall be maintained in the offices of that department.

8. Time Allocated to Processing Public Records Requests. In an effort to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the City allocates 12 hours per month of combined Public Records Officer and other City staff time for the handling and processing of public records requests. Additional time may be allocated from time to time depending on staffing and funding availability.

9. Disclaimer of Liability. Neither the City nor any officer, employee, official or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon a release of Public Records if the person releasing the records acted in good faith in attempting to comply with this policy. This policy is not intended to expand or restrict the rights of disclosure or privacy as they exist under state and federal law. Despite the use of any mandatory terms such as “shall,” nothing in this policy is intended to impose mandatory duties on the City beyond those imposed by state and federal law.

TITLE: Public Records Request Policy, Policy No. 2017-03

Effective Date: _____

Passed By City Council: _____