

# Ordinance 2024-03-13-01 Public Information Policy Attachment “A”

## I. General

### A. Purpose

Pursuant to Government Code section 552.230(a) the City of Woodcreek (the “City”) promulgates these reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay. The purpose of this policy is to set out guidelines to ensure that all requests for public information are handled uniformly, fairly, timely, and within the statutes set out by the Texas Public Information Act (“the Act”). In the event of any conflict between the City’s Policy and the Act, the Act and other applicable state laws shall prevail.

### B. The Public Information Act

1. The Texas Public Information Act gives the public the right to request access to government information through a written request to a governmental body. The request must ask for records or information already in existence. The Act does not require a governmental body to create new information, to do legal research, or to answer questions.
2. A governmental body has no duty to comply with standing requests for copies of records. If a requestor seeks documents that are not in existence at the time of the request, the governmental body may notify the requestor of this fact and ask the requestor to resubmit the request at a later time when such a record may be available. Also, the governmental body has no duty to notify the requestor in the future that the information has come into existence.
3. The Act requires that an officer for public information of a governmental body promptly produce public information for inspection, duplication, or both on application by any person to the officer. “Promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
4. If an officer for public information cannot produce public information for inspection or duplication within ten (10) business days after the date the information is requested, the officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

## C. Scope

1. Public information includes information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. The Act applies to records regardless of their format. It includes information that is maintained in paper, tape, microfilm, video, electronic data held in a computer memory, as well as other mediums specified under law.
2. All City Officials and Employees shall ensure that any information they create, transmit, receive, or maintain in their official capacity, or while performing official business or a governmental function on behalf of the City, which pertains to official business of the City is preserved in accordance with the City's Records Retention Schedule and promptly produced in response to a request for public information.

## II. Duties and Responsibilities

### A. Public Information Officer

The City Secretary serves as the City's Officer for Public Information ("OPI") and is responsible for the effective disposition of public information requests submitted to the City of Woodcreek. An effective and efficient means of receiving, cataloging, retrieving, and dispensing of records is essential to comply with the laws of the State of Texas. It is the duty of the OPI to:

1. make public information available for public inspection and copying;
2. protect public information from deterioration, alteration, mutilation, loss, or unlawful removal;
3. repair, renovate, or rebind public information as necessary to maintain it properly; and
4. make reasonable efforts to obtain public information from a temporary custodian if:
  - a. the information has been requested from the governmental body;
  - b. the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;
  - c. the officer for public information is unable to comply with the duties imposed by the Act without obtaining the information from the temporary custodian; and
  - d. the temporary custodian has not provided the information to the officer for public information or the officer's agent.

## B. City Staff.

Each City Staff Member is an agent of the Officer for Public Information for the purposes of complying with this policy.

1. City Secretary. It is the responsibility of the City Secretary to take charge of, arrange, and maintain the records of the City. The City Secretary's office is primarily responsible for locating and compiling documents responsive to all requests.
2. City Manager. The City Manager is responsible for taking charge of, arranging, and maintaining the records of the City's Finance and Human Resource documents.

## C. City Contractors.

1. City Planner. The duties of the City Planner are handled by a third-party, contracted vendor. This vendor is responsible for taking charge of, arranging, and maintaining the records of the City of Woodcreek's planning activities.
2. City Engineer. The duties of the City Engineer are handled by a third-party, contracted vendor. This vendor is responsible for taking charge of, arranging, and maintaining the records of the City of Woodcreek's engineering activities.
3. Code Administrator. The duties of the Code Administrator are handled by a third-party, contracted vendor. This vendor is responsible for taking charge of, arranging, and maintaining the records of the City of Woodcreek's Code Ordinance activities, including the issuance of permits and violation letters.

## D. Temporary Custodians.

Any current or former Officer or Employee of the City who, in the transaction of official business, creates or receives public information that the Officer or Employee has not provided to the OPI or OPI's agent is considered a Temporary Custodian of that information. Temporary Custodians have the following responsibilities:

1. A Temporary Custodian with possession, custody, or control of public information shall surrender or return the information to the City not later than the 10th day after the date the OPI or the OPI's agent requests the Temporary Custodian to surrender or return the information.
2. A Temporary Custodian's failure to surrender or return public information as required in/by this Policy and the Act is grounds for disciplinary action by the City that employs the Temporary Custodian or any other applicable penalties provided by the Act or other law.

3. The City is considered to receive the request for information held by a Temporary Custodian on the date the information is surrendered or returned to the City by the Temporary Custodian.

4. Temporary Custodians do not have, by virtue of the Officer's or Employee's position or former position, a personal or property right to public information the Officer or Employee created or received while acting in an official capacity.

### III. Procedures

#### A. Signage Required

1. As required by the Act, the City's OPI shall prominently display the sign prescribed by the Attorney General that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information at the following locations:

- a. The City's website;
- b. The City's Main Message Board, located at Woodcreek City Hall; and
- c. The Office of the City Secretary.

2. The physical sign must be displayed on paper at least 8-1/2" x 14".

#### B. Method of Making Written Request for Public Information

1. The City designates the following mailing address and electronic mail for receiving written requests for public information. The City shall provide the designated mailing address and electronic mailing address to any person on request. The City will only respond to a written request for public information that is delivered to the City's OPI by one of the following methods:

- a. United States mail addressed as follows:  
The City of Woodcreek  
Office of the City Secretary  
41 Champions Circle  
Woodcreek, Texas 78676
- b. electronic mail sent to: [OpenRecordsRequest@WoodcreekTX.gov](mailto:OpenRecordsRequest@WoodcreekTX.gov)
- c. hand delivery to the City's OPI or designated representative

2. Only the three(3) methods listed above are approved methods for submitting requests for public information to the City. The City's OPI shall include a statement, including the mailing address and electronic mail address designated by the City, that a request for public information may be made by those methods only on:

- a. the sign required to be displayed by section III. A. of this policy and section 552.205 of the Act; and
- b. the City's website.

### C. Receiving Requests for Information

#### 1. Written Requests

All requests for information must be submitted in writing via one of the approved methods detailed in this Policy. If an Officer or Employee is approached and asked for information verbally, they shall direct the requestor to the City's website to make the request using the designated email address or provide them with the Texas Public Information Act Information Request Form prescribed by the Attorney General's Office.

#### 2. Date/Time Stamp

Any written requests for public information not submitted via email shall be immediately date and time stamped by the agent accepting the request with the date and time the request was submitted.

#### 3. Receiving a Request

a. Requests submitted on an official city holiday, weekend or after business hours, on a regular business day will be considered received on the next business day. When calculating deadlines, the first business day is the day after the City officially receives the request. As noted above, weekends and holidays when the City's administrative office is closed do not count as business days, therefore, the day a request is submitted may differ from the day it is received.

b. If the City receives a written request by United States mail and cannot adequately establish the actual date on which the City received the request, the written request is considered to have been received by the City on the third business day after the date of the postmark on a properly addressed request.

#### 4. Intake

a. Requests not submitted via email shall be immediately, but no later than one (1) business day after the request was received, forwarded to the City Secretary or their designated agent.

b. Upon receipt of a request not submitted via email, the City Secretary or their agent shall immediately, but no later than one (1) business day after the request was received, input the request into the Public Records Request Database.

c. Within three (3) business days of receiving a request the City Secretary or their agent will review the request and either assign the request to the appropriate City Staff Member, Contractor or Temporary Custodian for compilation of the responsive documents or if the request is unclear or particularly voluminous, the City Secretary will seek clarification from the requestor.

d. Requests for clarification should be made as soon as possible, but no later than the 10th business day from the date the request was received. All correspondence with a requestor shall be made via email and tracked through the Public Records Request Database so that proper records can be kept. If clarification is sought, the 10-day deadline to respond to the request is suspended and restarts upon receipt of the clarification from the requestor.

e. After a City Staff Member, Contractor or Temporary Custodian is assigned a request, they have three (3) business days to do one of the following:

(1) email the responsive documents to the City Secretary for further review prior to release;

(2) notify the City Secretary's Office that more time is needed to compile the responsive information; or

(3) if the City Staff Member, Contractor or Temporary Custodian anticipates it will take longer than three (3) hours to compile the responsive information, provide the City Secretary's Office with an estimate of the personnel time required to respond to the request.

f. After receiving responsive information from the appropriate City Staff Member, Contractor or Temporary Custodian, the City Secretary will review the information to determine if it includes any information that must be redacted or withheld because it is confidential by law or subject to a discretionary exception to disclosure.

g. The City Secretary shall promptly, but no later than ten (10) business days from when the request was received, respond to the requestor with one of the following:

(1) the responsive information;

(2) a letter providing the exact date and time when the information will be available;

(3) a clarification or narrowing letter;

(4) a cost estimate letter;

(5) a letter notifying the requestor that the City is seeking an Attorney General ruling regarding the request.

## 5. Questions

a. As stated above, the Act does not require the City to answer questions. However, it is the primary duty of City Officials and Employees to serve the citizens of Woodcreek. Accordingly, when a written request is submitted through an approved method seeking answers to specific questions, but does not specify what, if any, documentation is being sought, the City Secretary or their designee will proceed as follows:

(1) First, they will attempt to identify any documents in existence that might provide the requestor with the answers they are seeking.

(2) If unable to identify any documentation, the City Secretary shall seek clarification notifying the requestor that the Act does not require the City to answer questions and asking them to clarify what documentation they are seeking.

(3) If a requestor is unable to identify any documentation they are seeking, the City Secretary shall notify the requestor that the Act does not require the City to answer questions, but that their request is being processed as a “citizen inquiry”.

(4) Citizen requests seeking the answers to questions not submitted in writing do not need to be considered requests submitted under the Act and processed in accordance with the procedures stated in this policy.

(5) However, any request for any kind of documentation (paper or electronic copies) should be considered a request submitted under the Act, reduced to writing and processed in accordance with these procedures and the Act.

### D. Responding to Routine Requests for Information

1. Requests for the following documents are considered “routine” and may be immediately released to the requestor upon receipt of payment, if required, and do not have to be logged and processed in accordance with the procedures detailed in this policy:

- a. Agendas, Open Session
- b. Meeting Minutes, Open Session
- c. Meeting Recordings, Open Session
- d. City Ordinances

E. Responding to Requests for Non-Confidential Information

1. Release Requested Documents.

If responding to the request would incur less than forty dollars \$40 in personnel charges and there are no concerns regarding the confidentiality of the requested information, the City Secretary shall promptly send responsive documents and an invoice of the costs to the requestor as soon as possible, but no later than ten (10) business days from the date of the request.

2. Request for Additional Time.

If there are no confidentiality concerns regarding the requested information, but the information requested cannot be promptly produced because of the number of documents sought or availability of records, the City Secretary shall notify the requestor, in writing, of an estimated date and time on which the responsive information will be available.

3. Cost Estimate.

If there are no confidentiality concerns regarding the requested information, but it will incur charges of more than forty dollars (\$40) the City Secretary shall generate an itemized cost estimate letter and send it to the requestor as soon as possible, but no later than ten (10) business days from the date of the request.

4. Automatic Redactions.

a. The Attorney General's Office and/or the Texas Legislature has held that a City may redact the information listed below without the necessity of requesting a decision from the Attorney General. Therefore, any documents requested that include any of the following information, shall be immediately redacted and promptly produced to the requestor without seeking the Attorney General's permission.

- (1) a direct deposit authorization form;
- (2) a Form I-9 and attachments;
- (3) W-2 and W-4 forms;
- (4) a certified agenda and tape of a closed meeting;
- (5) a fingerprint;
- (6) L-2 and L-3 declarations;



(7) a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number;\*\*

(8) a credit card number, debit card number, charge card number, insurance policy number, bank account number, bank routing number; or access device number;\*\*

(9) an e-mail address of a member of the public;

(10) a Form DD-214 or other military discharge record that is first recorded or first comes into the possession of a governmental body on or after September 1, 2003;

(11) a social security number of a living person;

(12) the home address, home telephone number, emergency contact information, or information that reveals whether the person has family members of an employee, official or peace officer who has elected in writing that they wish to keep this information private;\*\*

(13) Information maintained by a family violence shelter center or sexual assault program; \*\*

b. If the City is redacting or withholding information denoted above with a double asterisk (\*\*) the City shall provide the following information to the requestor on a form prescribed by the Attorney General:

(1) a description of the redacted or withheld information;

(2) a citation to the section of the Act allowing the redaction;  
and

(3) instructions regarding how the requestor may seek a decision from the Attorney General regarding whether the redacted or withheld information is excepted from required disclosure.

c. The City has received a previous determination from the Attorney General, OR2018-29623, allowing the City to redact dates of birth of all living individuals without seeking permission from the Attorney General's Office.

## F. Responding to Requests for Confidential or Excepted Information

### 1. Attorney General Rulings

a. If the City Secretary identifies information is confidential or excepted from public disclosure and there has not been a previous determination about whether the information falls within one of the exceptions, the City must ask for a ruling from the Attorney General about whether the information is excepted from disclosure.

b. The City Secretary shall ask for a decision from the Attorney General by submitting a letter requesting a ruling to the Attorney General's Office - Open Records Division via certified mail or using the e-file portal on the Attorney General's website.

c. The request for ruling letter must state the exceptions that apply to the requested documents and include all information required by the Act.

d. The request for ruling letter must be submitted to the Attorney General's Office within a reasonable time but not later than the 10th business day after the date of receiving the written request. This letter is sometimes be referred to as a "10-day letter."

e. If the City seeks a ruling from the Attorney General's Office, the City Secretary or City Attorney's Office must provide a copy of the 10-day letter, redacted, if necessary, and without attachments, to the requestor via email or by certified mail within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request.

f. If a ruling from the Attorney General's Office has been requested, within fifteen (15) business days of receipt of the request the City Secretary or the City Attorney's Office must submit via certified mail or the e-file portal on the Attorney General's website written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. This letter is sometimes referred to as a "15-day brief." The following must be included with the brief:

(1) a copy of the written request for information;

(2) a signed statement as to the date on which the written request for information was received by the City or evidence sufficient to establish that date; and

(3) a copy of the specific information requested, or a representative sample of the information, if a voluminous amount of information was requested, labeled to indicate which exceptions apply to which parts of the copy.

g. Not later than the 15th business day after the date of receiving the written request, the City Secretary or the City Attorney's Office must forward a copy of the 15-day brief, redacted if necessary, and without attachments, to the requestor via email or by certified mail.

## 2. Legal Consultation for Disclosure Exceptions

a. If the City Secretary has a question or concern regarding the confidentiality of responsive information, the City Secretary will immediately forward said question or concern along with the written request and responsive documents to the City Attorney's Office for review.

b. Any requests concerning the following individuals or subjects must be immediately forwarded to the City Attorney's Office, for review:

- (1) Juveniles
- (2) Sexual assault/abuse/harassment
- (3) Attempted Suicide
- (4) Traffic accidents
- (5) Medical conditions
- (6) References to an individual's mental or physical injuries or defects
- (7) Personal financial information
- (8) Law enforcement investigations
- (9) Domestic violence
- (10) Body Worn Camera footage
- (11) Police officer personnel files
- (12) Pending litigation

## **IV. Policies Regarding Confidential and Discretionary Exceptions**

### **A. Requests for Agency Memoranda**

#### **1. Deliberative Process Privilege**

a. Section 552.111 of the Government Code excepts from disclosure an inter-agency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency. This exception encompasses the deliberative process privilege. This is a discretionary exception, the purpose of which is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process.

b. Section 552.111 excepts from disclosure internal communications, including communications between the City and a third party with a privity of interest, that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body.

c. Section 552.111 excepts from disclosure a preliminary draft of a document intended for public release in its final form as it necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document.

d. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes reflects the policymaking process of the City.

### **B. Requests for Information Related to Certain Legal Matters**

#### **1. Attorney Client Communications**

a. Section 552.107 of the Government Code excepts from public disclosure information that the Attorney General or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct. The Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022.

b. Texas Rule of Evidence 503 encompasses the attorney-client privilege which generally allows a client to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client.

c. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes to be confidential attorney-client communication.

## 2. Attorney Work Product

a. Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. "Attorney work product" is confidential under rule 192.5 if it reveals an attorney's core work product. Core work product is the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative.

b. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes to be confidential attorney work product.

## C. Requests for Information Related to Certain Legal Matters

### 1. Location or Price of Property

a. Section 552.105 of the Government Code exempts from disclosure information relating to appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. Section 552.105 is a discretionary exception designed to protect the City's planning and negotiating position with respect to particular transactions.

b. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes if released, would impair or tend to impair the City's planning and negotiating position in regard to particular transactions.

2. Competition or Bidding

a. Section 552.104(a) of the Government Code excepts from disclosure information that, if released, would give advantage to a competitor or bidder. Section 552.104 is a discretionary exception that allows the City to withhold information if knowing another bidder's or competitor's information would be an advantage.

b. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's office, believes if released, would give advantage to a competitor or bidder.

D. Requests Regarding Litigation

1. Pending or Anticipated Litigation

a. Section 552.103 of the Government Code provides exception from disclosure information relating to pending or anticipated litigation of a civil or criminal nature to which the City is or may be a party or to which an officer or employee of the City, as a consequence of the person's office or employment, is or may be a party. Section 552.103 is a discretionary exception the purpose of which is to enable a City to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures.

b. It is the policy of the City to seek the Attorney General's permission to withhold any information that the City Secretary, in consultation with the City Attorney's Office, believes to be related to pending or anticipated litigation.

v. **Requests for Information Not Subject to the Act**

A. Requests by City Officials in their Official Capacity

1. The purpose of the Act is to prescribe conditions under which members of the general public may obtain information from a governmental body. An official of the City who, in an official capacity, requests information held by the City does not act as a member of the public in doing so. Thus, the exceptions requiring public disclosure under the Act do not control the right of access of an official of the City to information maintained by the City.

2. Accordingly, information may be released to City Officials requesting the information in their official capacity in compliance with the following policy:

- a. Requests for information from a city official must be submitted to the City Secretary in writing.
- b. As soon as possible, but no later than 10 business days from the receipt of the request, the City Secretary will respond to the request from the City Official with either copies of the requested information, notice that the information is available for inspection, or notice that the request will be added to the next council agenda for consideration and direction.
- c. Information provided in response to a request by a City Official will be made available to all City Officials.
- d. City Officials will not be charged for information sought in their official capacity.
- e. Information that is protected by confidentiality laws and/or common law privacy laws that has no relationship to the transaction of official business, such as individuals' dates of birth, social security numbers and personal financial information, will be redacted prior to release to city officials.
- f. The City Secretary will mark all information provided in response to a request from a City Official as "Confidential – For Official Eyes Only."
- g. Any employee or city official who has access to confidential information pursuant to this policy must maintain the confidentiality of the information. Misuse of confidential information, including disclosing the information to person who is not authorized to receive the information or allowing an unauthorized person to inspect the information is a criminal offense.

## B. Intergovernmental Transfers

1. Information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality.
2. It is well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties.

3. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities.

4. When the City receives a request from another governmental body, it is the polity of the City to exercise its discretion on a case by case basis. The City Secretary is instructed to notify any governmental body that receives information through an intergovernmental transfer that the information being sent is not a release to the general public and the receiving governmental body must keep said information confidential and immediately inform the City if said information is requested by the public so that the City may assert any applicable exceptions, if necessary.

### C. Requests for Municipal Court Records

#### 1. Judiciary Not Subject to the Act

a. Courts and Judicial Branch Agencies are not subject to the Act nor to the Federal Freedom of Information Act. However, to ensure efficient and consistent responses to requests for information held by the Judiciary, it is the City's Policy that requests for information held by the Woodcreek Municipal Court be processed in accordance with these guidelines.

#### 2. Court Case Records

a. Court case records are records of any nature created, produced, or filed in connection with any matter that is or has been before a court. Court case records are considered information held by the judiciary. Therefore, the Act neither authorizes this information to be withheld nor requires it to be disclosed. Access to court case records is governed by common law, other statutory law and court rules. The Clerk of the Court serves as the custodian of court case records.

b. Requests from the public for court case records shall be immediately directed to the Court Clerk and processed in accordance with the following guidelines:

(1) Generally, court case records filed with the Court are considered public and will be released to the public unless access is restricted by law or court order.



(2) The following is a non-exhaustive list of court case records that are considered records of the judiciary and therefore not subject to the Act, but are considered public records under other law and may be released to the public unless a specific court order prohibits release in a particular case:

- (a) Summons and complaints;
- (b) Final judgments;
- (c) Final court orders, including orders of deferred disposition; and
- (d) Executed arrest warrants and supporting affidavits.

3. The following is a non-exhaustive list of court case records that are considered records of the judiciary and therefore not subject to the Act, but which are subject to other law prohibiting their release to the public:

- a. Records related to charges against or the conviction of a child, for a non-traffic related offense, see Article 45.0217 of the Code of Criminal Procedure.
- b. Records related to the conviction of or deferral of disposition for a child, for a non-traffic related offense, see Article 45.0217 of the Code of Criminal Procedure.

4. A request for a court case record from a defendant or attorney of record related to a pending municipal court case shall be forwarded to the City Prosecutor and processed in accordance with applicable discovery rules.

5. Prior to release the court clerk will redact any information that is confidential by law, such as dates of birth, driver's license numbers and license plate numbers, from any court case record.

6. The Court Clerk should promptly respond to requests for court case records, but because the records are not subject to the Act the Act's deadlines do not apply. However, it is the policy of the City, to within fourteen (14) days of the request, provide the requestor with either a copy of the records, or written notice of a date and time when the records will be available for duplication or inspection.

D. Judicial Records.

1. Judicial records are records made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function. Judicial records are considered information held by the judiciary. Therefore, the Act neither authorizes this information to be withheld nor requires it to be disclosed. Access to judicial records is governed by Rule 12 of the Rules of Judicial Administration. The custodian of judicial records is the presiding judge of the Woodcreek Municipal Court.

2. Any request to inspect or copy a judicial record received by the City and properly directed to the Municipal Court Judge should be immediately, but no later than two (2) business days after being received, forwarded to the Presiding Judge to be processed in accordance with Rule 12 of the Rules of Judicial Administration.

3. All requests to inspect or copy a judicial record must be in writing, must include sufficient information to identify the record, and must be directed to the records custodian, the Presiding Judge and not to a court clerk or other agent for the records custodian.

E. Discovery Requests for Records

1. Subpoena Duces Tecum

a. Section 552.0055 of the Act clearly states that a subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act.

b. Accordingly, any subpoena or discovery request received by the City shall be immediately forwarded to the City Attorney's Office so that the City Attorney can prepare a response in compliance with all applicable laws.

F. Business Records Affidavit

1. Texas Rule of Evidence 902 allows certain documents to be self-authenticated and admitted into court proceedings, if they are accompanied by a business records affidavit.

2. The Act does not require the City to create documents, including a business records affidavit. Accordingly, a request for a business records affidavit to be executed is not governed by the Act. Such a request should be considered a discovery request and should be forwarded to the City Attorney’s Office to determine the necessary and appropriate response.

**VI. Costs**

**A. Charges for Copies**

**1. Administrative Code Charges Apply**

a. A requestor may ask to inspect information, get copies of the information, or both. If charges are approved by the Act, it is the policy of the City to charge the rates found in Rule §70.3 of the Texas Administrative Code.

b. The City Secretary will be responsible for applying the charges in accordance with this policy, issuing cost estimates, invoicing, and collecting payment from requestors. The City Secretary will fully document the amounts, paid and unpaid, for every request in the GovQA system.

**2. Charges for Paper and other Physical Copies of Information**

a. The following are the most common fees associated with hard copies of information.

<b>Copies and/or printouts, standard and legal size</b>	<b>\$.10/page, or part of a page</b>
<b>Oversize paper copy</b>	<b>\$.50/page</b>
<b>Specialty Paper (map)</b>	<b>\$1.50/page</b>
<b>Postage</b>	<b>Actual Cost</b>
<b>Flash Drive</b>	<b>\$6.00</b>
<b>Labor charge for locating, compiling, manipulating data, reproducing, and if necessary, redacting confidential information</b>	<b>\$15/hour</b> <b>Does not apply to requests for 50 or fewer pages of paper records.</b>
<b>Overhead</b>	<b>20% of the charge made to cover any labor costs. Only applicable when labor charges are appropriate.</b>

### 3. Charges for Electronic Copies.

- a. In an effort to respond to requests as efficiently as possible, it is the policy of the City to respond to a request with electronic copies whenever possible.
- b. Per page charges will not apply to copies of information provided electronically, but the following charges will apply:
  - (1) labor charges at the rate of \$15/hour for locating, compiling, manipulating data, and producing the information;
  - (2) overhead at the rate of 20% of the charge made to cover any labor costs;
  - (3) \$6 per flash drive, if applicable.

### 4. Charges for Certified Copies

- a. The Act does not require the City to create documents; therefore, the City is not required to create and produce certified copies of city records. However, it is the City's policy to issue standard or legal-size certified copies of city records upon request for \$2.00 per page.

## B. Charges for Inspection of Information

### a. Charges for Inspection of Physical Records

- (1) If the requestor does not request a copy of public information, no charge will be imposed for making the public information that exists in a paper record available for inspection unless:
  - (a) the information being requested completely fills, or when assembled will completely fill, six (6) or more archival boxes and would take five (5) or more personnel hours to make available; or
  - (b) the information being requested is more than five (5) years old and would take five (5) or more personnel hours to make available; or
  - (c) a page being requested contains confidential information that must be edited from the record before the information can be made available for inspection.
- (2) If the information completely fills, or when assembled will completely fill, six (6) or more archival boxes or is over five (5) years old as described above, the City will charge the requestor the labor charges associated with making the documents available for inspection.

(3) If a redaction from a page is required, the City will charge \$0.10 per page for the cost of making a photocopy of the page from which confidential information must be edited.

b. Charges for Inspection of Electronic Records

(1) In response to a request to inspect information that exists only in an electronic medium and that is not available directly online to the requestor, the City will not charge to inspect this information unless complying with the request will require programming or manipulation of data.

(2) If programming or manipulation of data is required, the City Secretary shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available.

(3) The time necessary to redact confidential information from electronic records meets the definition of manipulation of data.

(4) A charge under this section will be assessed in accordance with the Act and the section of this policy related to programming or manipulation of data.

C. Waiver of Costs

1. Waiver for the General Public

a. It is the policy of the City to waive the costs associated with producing physical or electronic copies of the information if the total is less than \$15.00 because the actual cost of processing and collecting a charge less than \$15.00 will exceed the amount of the charge.

2. Waiver for the Press

a. It is the policy of the City to reduce the costs associated with requests made by members of the media associated with local publications by \$10.00 because providing the public information to members of the media primarily benefits the general public.

## D. Communicating Costs to Requestors

### 1. Written Itemized Estimate of Charges

a. If it is estimated by city staff that a request for a copy of public information will result in the imposition of a charge that exceeds forty dollars (\$40.00), or a request to inspect a paper record will result in the imposition of a charge that exceeds forty dollars (\$40.00), the City Secretary shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs before compiling and redacting the responsive information. Said statement must comply with the requirements of section 552.2615 of the Texas Government Code and will not toll the deadlines for requesting a ruling or submitting a briefing. Said statement must also notify the requestor if a deposit will be required per the City's policy. The statement must advise the requestor they may contact the City if there is a less costly method of viewing the records.

### 2. Invoices

a. If it is estimated by city staff that a request for a copy of public information will result in the imposition of a charge that is forty dollars (\$40.00) or less, or a request to inspect a paper record will result in the imposition of a charge that is forty dollars (\$40.00) or less, the City Secretary shall compile the responsive information, redact as necessary and release it to the requestor with an invoice for the associated charges. Said invoice must include information on how to pay and the City's policy regarding overdue balances.

### 3. Deposits

a. A deposit of fifty percent (50%) of the entire estimated amount shall be imposed when the anticipated costs for the preparation of a copy of public information exceed one hundred dollars (\$100.00).

b. If a requestor has accrued over one hundred dollars (\$100.00) of overdue and unpaid balances related to previous requests, a deposit in the amount of the unpaid amounts owing to the City must be received before the City Secretary will begin preparing a copy of public information in response to a new request.

c. If a deposit is required as detailed above, the request for a copy of public information is considered to have been received on the date the City receives the deposit for payment of anticipated costs or unpaid amounts.

d. If a requestor modifies the request in response to the requirement of a deposit, the modified request is considered a separate request and is considered received on the date the City receives the written modified request.

e. A requestor who fails to make a deposit before the 10th business day after the date the deposit is required is considered to have withdrawn the request for the copy of the public information that precipitated the requirement of the deposit or bond.

## E. Requests Requiring Programming or Manipulation of Data

### 1. Definitions

a. "Manipulation" means the process of modifying, reordering, or decoding of information with human intervention.

b. "Programming" means the process of producing a sequence of coded instructions that can be executed by a computer.

### 2. Circumstances when Required

a. The City shall provide to a requestor written "programming or manipulation of data" statement described below if it is determined that responding to a request will require programming or manipulation of data; and

b. compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

c. the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

### 3. Contents of Written Statement

- a. The written “programming or manipulation of data” statement must include:
- (1) a statement that the information is not available in the requested form;
  - (2) a description of the form in which the information is available;
  - (3) a description of any contract or services that would be required to provide the information in the requested form;
  - (4) a statement of the estimated cost of providing the information requested in the form; and
  - (5) a statement of the anticipated time required to provide the information in the requested form.

### 4. Timing of Written Statement

- a. The City Secretary shall provide the written “programming or manipulation of data” statement to the requestor within twenty (20) days after the date of the receipt of the request.
- b. If the City Secretary needs additional time to provide the written statement they must provide written notice to the requestor, within twenty (20) days after the date of receipt of the request, that additional time is needed.
- c. If written notice above is provided the City Secretary has an additional ten (10) days to provide the written “programming or manipulation of data” statement.
- d. After providing the requestor with the written statement, the City does not have any further obligation to provide the information in the requested form or in the form in which it is available unless within thirty (30) days the requestor states in writing to the City that the requestor:
- (1) Wants the City to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the City agree; or
  - (2) Wants the information in the form in which it is available.
  - (3) If a requestor does not make a timely written statement under the above provisions of this policy, the requestor is considered to have withdrawn the request for information.



e. The City Secretary shall maintain a file containing all programming and manipulation of data written statements issued under this section in a readily accessible location.

## F. Requests Requiring Excessive Personnel Time

### 1. Time Limit Established

a. Section 552.275, Texas Government Code authorizes the City Council to establish a reasonable limit on the amount of time that City personnel are required to spend producing public information for inspection by a requestor or providing copies of public information to a requestor without recovering labor charges.

b. The City Council has determined that 36 hours is a reasonable limit for the 12- month period and 15 hours is a reasonable limit for a one-month period to be imposed under Section 552.275.

c. The City may charge for the time spent by City personnel producing, locating, compiling, manipulating data, and reproducing information for inspection or duplication, or otherwise providing copies of public information, in response to one or more requests for public information from a person, that exceeds 15 cumulative hours during a one-month period or exceeds 36 cumulative hours during a 12-month period, said period to correspond with the fiscal year of the city

d. For the purposes of this section, "person" shall mean an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

### 2. Written Statements

a. The City Secretary or the City Secretary's designee shall provide the requestor with a written statement of the amount of personnel time spent complying with each request and the cumulative amount of time spent complying with requests from that requestor during the applicable monthly and yearly period. The time spent preparing the written statement of total time spent may not be included.

### 3. Written Cost Estimate

a. When in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor equals or exceeds the limits established by the governmental body under this policy, the City Secretary or the City Secretary's designee shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses necessary to comply with the request. The estimate must be provided on or before the 10<sup>th</sup> day after the date on which the public information was requested. The amount of the cost shall be established by rules prescribed by the attorney general and this policy.

b. If the City Secretary or the City Secretary's designee determines that additional time is required to prepare the written estimate of costs and provides the requestor with a written statement of that determination, the City Secretary or the City Secretary's designee must provide the written estimate of costs as soon as practicable, but on or before the 10<sup>th</sup> day after the date the City provides the written statement that additional time is required.

### 4. Requestor's Response to Cost Estimate

a. After the City Secretary or the City Secretary's designee has provided the requestor with the written estimate of costs, the City will not produce public information for inspection or duplication or provide copies of public information in response to the requestor's request unless on or before the 10<sup>th</sup> day after the date the City provided the written statement, the requestor submits payment of the amount stated in the written statement.

b. If the requestor fails or refuses to submit payment, the requestor shall be considered to have withdrawn the requestor's pending request for public information.

### 5. Exceptions

a. This division does not apply if the requestor is:

(1) An individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

(a) dissemination by a news medium or communication service provider, including:

(i) an individual who supervises or assists in gathering, preparing, and disseminating the news or information; or

(ii) an individual who is or was a journalist, scholar, or researcher employed by an institution of higher education at the time the person made the request for information; or

(2) creation or maintenance of an abstract plant as described by Section 2501.004, Insurance Code.

(3) "Communication service provider" has the meaning assigned by Section 22.021, Civil Practice and Remedies Code.

(4) "News medium" means a newspaper, magazine or periodical, a book publisher, a news agency, a wire service, an FCC-licensed radio or television station or a network of such stations, a cable, satellite, or other transmission system or carrier or channel, or a channel or programming service for a station, network, system, or carrier, or an audio or audiovisual production company or Internet company or provider, or the parent, subsidiary, division, or affiliate of that entity, that disseminates news or information to the public by any means, including:

(a) print;

(b) television;

(c) radio;

(d) photographic;

(e) mechanical;

(f) electronic; and

(g) other means, known or unknown, that are accessible to the public.

(5) An elected official of the United States, this state, or a political subdivision of the state.

(6) A representative of a publicly funded legal services organization that is exempt from federal income taxation under section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under section 501(c)(3) of that code.

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