

**PUBLIC RECORDS ACT POLICY**

<b>Title:</b> <b>Disclosure of Public Records</b>		<b>Policy Number:</b> <b>REC-001-2017</b>
<b>Policy Effective Date:</b> <b>September 6, 2017</b>	<b>Supersedes:</b> <b>June 3, 2005</b>	<b>Pages:</b> <b>10</b>
<b>Mayor:</b> <i>N Smith</i> 281B3CE79E884DA...	<b>Finance Director:</b> <i>Sonya Springer</i> 3787F22E3BC44F2...	<b>Manager:</b> <i>K Fitzhumm</i> FB3354F605614D7...

**1. PURPOSE**

Citizens have the right to access most public records concerning the conduct of government. It is the City of Lynnwood's policy to release records in compliance with the Public Records Act and any other applicable provisions of federal or state law.

**2. GENERAL**

The City is required by the Public Records Act (PRA), Chapter 42.56 RCW, to adopt and enforce reasonable rules and regulations to provide full public access to public records. This policy complies with the requirements of the PRA by providing for straight-forward, predictable practices for responding to and fulfilling requests for disclosures of public records in a manner consistent with the PRA.

This policy includes both statutory requirements and best practices. Except where these provisions are mandated by statute, any duties identified 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 and to revise or change the policy at any time.

This policy shall be posted on the City of Lynnwood Website.

**3. DEFINITIONS****3.1 Incorporation of Definitions**

This policy incorporates the definitions in RCW 42.56.010 and any relevant definitions in RCW 42.17A.005.

**3.2 Additional Definitions**

For the purpose of this policy, the following definitions apply

**3.2.1** "PRA" refers to the Public Records Act, Chapter 42.56 RCW.

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**3.2.2** “City” refers to the City of Lynnwood. The City of Lynnwood is a general purpose governmental entity that provides the full range of municipal services allowed by statute or charter. These services include police, street maintenance, traffic and transportation, sewer and water utilities, environmental, surface water and storm water, planning and zoning, permits and inspections, parks and recreation, and general administrative services

**3.2.3** “Exemption” or “Exempt Record” refers to any statute that allows or requires the City to withhold information or records in response to a PRA request. Exemptions include those identified in the PRA or in other statutes incorporated by RCW 42.56.070. Exemption from disclosure of a portion or a record does not automatically exempt the remainder of the record from disclosure. Exempt portions of records may be subject to redaction.

**3.2.4** “Policy” refers to this policy for the Public Records Act.

**3.2.5** “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. Electronic data, including email, that meet this definition shall be considered a public record. Records created or received by employees using privately owned devices only qualify as public record if the employee was acting within the scope of employment when the record was created or received, or when the record is subsequently used for a City purpose.

**3.2.6** “Public Records Officer” means the City Clerk or designee.

**3.2.7** “Public Record Liaison or Records Liaison” is the person in a department assigned to work with the PRO to gather responsive records and identify possible exemptions.

**3.2.8** “Public Records Request or PRA Request” means a request made to the City pursuant to the Public Records Act for disclosure of public records.

**3.2.9** “Request for Health Care Records” means any request for records that contain health care information. Such requests are governed by Chapter 70.02 RCW and the City’s policy for accessing health care records.

**3.2.10** “Record Holder” is the individual employee who may be the custodian of the records sought in a PRA request.

**3.2.11** “Requestor” means the person or entity that has made a Public Records Request to the City.

**3.2.12** “Court Records Request” means any request for Lynnwood Municipal Court records are exempt from the Public Records Act and are subject to release directly through the Lynnwood Municipal Court under General Rule 31.1.

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### **3.3 Organization of the City**

The City's Main Office is "City Hall" located at:

19100 44<sup>th</sup> Ave W.  
Lynnwood, WA 98036

## **4. GUIDELINES**

### **4.1 Public Records Request**

#### **4.1.1 Public Records Officer**

The City Clerk shall serve as the Public Records Officer of the City of Lynnwood. The City Clerk may appoint a designee to fulfill the responsibilities of the Public Records Officer.

The Public Records Officer shall:

- Be responsible for implementing the City's process regarding disclosure of public records;
- Serve as the principal contact point with any Requestor who has made a Records Request to the City, unless the PRO has delegated these responsibilities for a PRA request to a Records Liaison;
- Coordinate City's Public Records Liaisons in this regard, generally ensuring the compliance of the liaisons with public records disclosure requirements;
- Make a final decision in cooperation with the general manager and attorney regarding disclosure and application of exemptions; and
- Maintain the City's indices, if any.

#### **4.1.2 How to Make a PRA Request**

Public records may be inspected or copies of public records may be obtained by the public at the City of Lynnwood City Hall upon compliance with the following procedures:

- All requests must be directed to the Public Records Officer. The City encourages that all request be made in writing using the City's Public Records Request form, which is available at City Hall and on the City's website. It may be mailed, emailed (submitted through the City's website) or delivered in person to City Hall. In-person requests must

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be made during City Halls normal business hours. The request should include the following information:

- An indication that the request is being made for access to a public record pursuant to the Public Records Act;
  - The requestor's name, address, and convenient means of contact such as email address, phone numbers, fax, etc.;
  - The date of the request;
  - A description of the public records requested that include sufficient details to all the City to identify responsive records;
  - Whether the requestor wants to inspect records or wants copies;
  - Signature of the Requestor.
- The Washington Courts have recognized that oral requests for public records can be problematic and therefore requestors are strongly encouraged to make written requests using the City's request form. When a Records Request is made orally, the City will should confirm the request in writing in its initial response. Unless the requestor further clarifies the request within five (5) business days, the City will use the written confirmation to define the scope of the request. Any oral request must be made during City Hall's normal business hours.
  - It is the requestor's obligation to provide the City with fair notice that a Public Records Act request has been made. When a requestor does not use the City's official request form, or when a requestor submits a request to an employee other than the City's Public Records Officer, or includes a request as part of other documents provided to the City for reasons other than making a PRA request, the requestor may not be providing fair notice to the City. To ensure fair notice is provided, requestors are encouraged to use the official forms, make request through the Public Records Officer and/or take other steps to clearly identify their request. For example, when a request is submitted with other documents not related to disclosure of public records, it shall be the responsibility of the requestor to provide reasonable notice that a public records request is included. This notice may be in the form of an entry on a cover letter or cover sheet.

### **4.2 Procedures for Response to Request**

**4.2.1 Initial Five-Day Response.** The City shall respond promptly to requests for public records in accordance with the requirements of RCW 42.56.520 and this policy and procedure. The deadline for initial response to records request is

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five (5) business days after receipt of the Records Request. Business days do not include weekends and City holidays.

- When possible, provide notice that responsive records are available. If the record requested is available via the City's website, the response may include a specific link to the document;
- Seek clarification or refinement of the request if needed to identify the record requested and a reasonable estimate of when the records will be provided;
- Indicate that the City does not have any responsive records or that any responsive records are exempt from disclosure;
- Provide a reasonable estimate of when the request can be fulfilled. For large requests that will be filled in installments, the response will also indicate when the first installment will be made available.

**4.2.2 Large Requests.** When receiving a request that appears to be broad in nature, the PRO may request clarification from the requestor to ensure that the appropriate records are identified and to determine if the request can be narrowed. Clarification shall focus on information needed to identify responsive records. Any information provided about the purpose of the request shall not be used as a basis for denying the request. The City will provide a reasonable estimate of when the records will be provided if no clarification is received.

When appropriate, as part of the clarification process, the PRO or Records Liaison may work with the requestor to find ways to narrow the request. When a requestor agrees to narrow a request, nothing prevents the requestor from later expanding the request back to its original scope.

When a Records Request is for a large volume of records, the City may elect to provide records on an installment basis. If a requestor does not contact the PRO within fifteen (15) days to arrange for the review of the first installment, the City may deem the request abandoned and stop fulfilling the remainder of the request.

**4.2.3 Request for List of Names.** The PRA prohibits the City from producing lists of names to a requestor who intends to use the list for commercial purposes. When a requestor request a list of names, the requestor should certify the intended use of the list and may be asked to sign a declaration providing that the list will not be used for commercial purposes.

**4.2.4 Notice to Third Parties.** If a public record contains personal information that identifies an individual or organization other than the subject of the requested public record, the City may notify that individual or organization to allow the third party to seek relief pursuant to RCW 42.56.540. The City may

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take this into account when providing an estimate for when the records will be available. If the public record has been provided to the City and marked as “confidential”, “proprietary”, “business secret” or other such declaration, the City may notify the individual or organization to allow the third party to seek relief pursuant to RCW 42.56.270. Nothing in this policy is intended to create any right to such notice.

**4.2.5** A PRA request only applies to records that exist at the time of the request. The PRA does not apply to requests for information or require the City to create a new record. Requestors cannot make “standing” PRA requests.

**4.2.6** If the City does not respond in writing within five (5) business days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:

- Consider the request denied; and
- Petition the Public Records Officer

### **4.3 City Actions After a Request Is Received**

**4.3.1 Order of Response.** Fulfillment of requests shall be processed in the order that provides the timeliest response. Requests may be fulfilled in the order of receipt if easily fulfilled requests are not postponed behind larger or more complicated request strictly because they were received later.

**4.3.2 Locating Responsive Records.** After receiving a request, the PRO or Public Records Liaison shall determine whether what departments might have responsive records and whether it will be necessary to conduct electronic searches for records. The PRO or Public Records Liaison will then work with the Records Liaison and City attorney to determine if any exemption applies.

### **4.4 Exemptions**

**4.4.1 Exemptions.** The Public Records Act and other statutes exempt from or prohibit disclosure of certain public records. It is the policy of the City to provide prompt and helpful access to all public records in the City’s custody that state statutes do not exempt or prohibit from disclosure. Requested records may only be withheld or redacted consistent with statutory requirements, which shall be documented for the requestor in accordance with the requirements of RCW 42.56.210.

Some public records that are otherwise subject to disclosure may contain specific content that is exempt from disclosure. The presence of exempt information does not necessarily exempt an entire record from disclosure. Exempt portions of an otherwise disclosable records shall be redacted prior o inspection or copying and such redactions shall be documented. The requestor shall be notified of the redaction in accordance with the requirements of RCW 42.56.210.

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The following are summaries of common exemptions relied upon by the City. Note, the City reserves the right to assert any exemptions permitted by law when the City determines non-disclosure serves the public interest and is not limited to the exemptions listed below:

- Records that are protected by trade secrets law;
- Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;
- Personal information in files maintained for board members and City employees to the extent that disclosure would violate their right to privacy, including but not limited to addresses, phone numbers, Social Security numbers, voluntary deductions, marriage status, number of dependents, and any garnishment deductions;
- Preliminary drafts, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the board in connection with any board action;
- All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;
- Medical records;
- Records created in anticipating of litigation;
- Records reflecting communications between attorneys and City employees where legal advice is sought or received; or
- Any records which is exempt from disclosure under state or federal law.

**4.4.2 Withholding Logs and Redactions Logs.** When records are withheld, or redacted, the requestor shall be informed in writing the statutory citation for the exemption and a brief explanation of how the exemption applies. For withheld records, the City will also provide basic identifying information for each withheld record including the type of record, the date of the record was created, the number of pages, the author, and recipients, if any.

### **4.5 Copying Public Records**

**4.5.1 Copies.** The City will charge one or more of the following charges for copies:

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- Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;
- Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;
- Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and
- Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the more efficient manner available to the agency in its normal operations; and
- The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope use to mail the copies to the requestor, and the actual postage or delivery charge.
- The de minimis amount for the City may be waived under \$5.00.

**4.5.2 Deposits.** An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. An agency may waive any charge assessed for a request pursuant to agency rules and regulations.

**4.5.3 Copies of electronic records.** Unless the requestor specifically requests copies of records in a particular format, the City will usually produce all records electronically. Electronic records that require redaction usually cannot be produced in a native format and will be converted to PDF.

## **4.6 Inspection of Records**

**4.6.1 Notice.** Once the Public Records Officer or Public Records Liaison has collected all responsive records (or the first installment if the records are being produced on an installment basis), has reviewed the responsive records to remove exempt records, and has prepared an exemption log, the Public Records Officer or Public Records Liaison shall notify the Requestor that the records are available.

**4.6.2 Response by Requestor.** If the Requestor does not contact the Public Records Office to arrange for payment of the copies or for review of the records within fifteen (15) days after the email notifying the Requestor their records are ready, the City may consider the Records Request abandoned, unless the Requestor seeks an additional amount of time to review the records.

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**4.6.3 Protection of Records.** In order that Public Records maintained on the premises of the City may be protected from damage or disorganization as required by the Act, the following procedures and practices are hereby instituted:

- No Public Records shall be removed from City Hall without the Public Records Officer's permission;
- Inspection of any Public Records shall be conducted in the presence of the Public Records Officer or designated staff;
- No public records may be marked, defaced, torn, damaged, destroyed, unreasonably disorganized or removed from its proper location or order by a member of the public;
- 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; and
- Public records of the City may be copied only on the copying machines of the City unless other arrangements are made by the Public Records Officer.

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

**4.6.5 Closing the File.** Once all copies of requested records have been provided to the Requestor, the Requestor has reviewed the requested records, or 30 days have passed since the Requestor was notified that the records were available and the Requestor has failed to contact the Public Records Officer to arrange for the review of those records or for payment for copies, the Public Records Officer shall treat the request as closed.

### **4.7 Administrative Review of Denial**

A Requestor may ask for review of a decision to withhold or redact exempt records by submitting a written petition to the Public Records Officer that includes a copy of the redaction or exemption log or detailed description of the City's statement of withholding. The request for review and any relevant information shall be forwarded immediately to the City's general counsel, who shall consider the petition and either reverse or affirm the denial within two days of the City's receipt of the petition. The City and the Requestor may mutually agree to a longer period of time for consideration of a petition for review. If the withholding or redaction is affirmed, the decision shall be considered the City's final action for the purposes of judicial review. If the decision to withhold or redact is reversed, the Public Records Officer shall proceed to make the subject records

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available to the Request for inspection in accordance with the provision of this policy and procedure.

### **4.8 Index of Public Records**

For the reasons stated in Resolution 2017-15, incorporated herein by reference, the City finds that it would be unduly burdensome and would interfere with the City's operations to maintain an index of records. The City will make available for public disclosure all indices which may at a future time be developed by City use.

### **4.9 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 as "shall", nothing in this policy is intended to impose mandatory duties on the City beyond those imposed by state and federal law.