

FREEDOM OF INFORMATION ACT REQUESTS

I. **PURPOSE:**

The following establishes policies and procedures for a City-wide policy for responding to Freedom of Information Act (FOIA) Requests for Public Records under the Arkansas Freedom of Information Act.

II. **RESPONSIBILITY:**

- A. The ultimate responsibility for responding to FOIA Requests for Public Records shall be vested in the City Attorney.
- B. The threshold responsibility for properly responding to FOIA Requests for Personnel Records maintained by an individual Department shall be vested in the City Attorney with the assistance of the Department Director maintaining the particular Personnel Records for which disclosure is sought.
- C. The threshold responsibility for properly responding to FOIA Requests for Public Records other than Personnel Records shall be vested in the City Attorney with the assistance of the Department Director maintaining the records or documents for which disclosure is sought.

III. **DEFINITIONS:**

This guideline shall apply to all City Departments. For purposes of this guideline, the following definitions shall apply:

- A. **FOIA Requests:** Any request, either oral or written, by any qualified person requesting a copy of or access to any Public Record.
- B. **FOIA Staff:** City employees who are charged with responding to FOIA Requests. All FOIA Staff, regardless of what department they work for, are under the direct authority of the City Attorney for the purposes of their duties concerning FOIA.
- C. **Public Record or Record:** Any writing, recorded sound, film, tape, electronic or computer-based information, or data compilation in any medium (1) required by law to be kept, or (2) otherwise kept and which constitutes a record of the performance or lack of performance of official functions which are or should be carried out by any official or employee

for the City. Any document maintained in or by any Department of the City is presumed to be a Public Record.

- D. Personnel Record: Any Record other than employee evaluation or job-performance Records.
- E. Employee Evaluation Record: An employee evaluation record, including job-performance records, is a Record that is (1) created by or at the behest of the employer, (2) for the purpose of evaluating the employee, and (3) that details the employee's performance or lack of performance on the job. These Records include preliminary notes and other materials.

IV. POLICY

FOIA Staff shall be in charge of receiving requests, determining the validity of requests, gathering Records to respond to requests (with the assistance of other City employees as needed), and answering requests.

In the event that FOIA Staff requests Records from any City department, division, or employee, that department, division, or employee shall, as soon as possible, (1) provide the documents requested, (2) request more time to gather the Records and indicate how much additional time is needed, or (3) indicate that it/he/she has no responsive Records.

Upon receipt of the requested Records, FOIA Staff shall determine whether each document they have obtained is exempt from FOIA, and if not, it must be redacted. FOIA Staff shall tender all non-exempt Records with any redactions required by law to the requestor in the timeframe and in the manner required by law.

A. Personnel Records:

1. In the case of Personnel Records or Employee Evaluation Records (unless the request seeks only the gross salary of a public employee), FOIA Staff shall notify subject of the Records that a request for his/her Records has been made and whether the Records are releasable.
2. The notice shall indicate that the subject of the Records may seek an opinion from the Arkansas Attorney General as allowed by law.
3. In the event of a review by the Attorney General, FOIA Staff shall not disclose the Records until the Attorney General has issued his or her opinion.

B. General Procedures: FOIA Requests for Records

1. Each Department Director is the Custodian of the Records for his/her Department. It is the duty of each Department Director to ensure that all Records which are the subject of a FOIA Request are available to FOIA

Staff via City software programs or are provided to FOIA Staff directly. In the event that FOIA Staff are unable to directly access Records or access them via software programs, Department Directors shall ensure that the Records are provided to FOIA Staff as soon as possible

2. FOIA Staff have direct access only to a limited number of Records. In the event it is known or suspected that additional records are needed to fulfill a FOIA Request, FOIA Staff shall request the records from the appropriate department(s).
3. If FOIA Staff have any questions regarding a Record's exemption from FOIA, they should contact the City Attorney for assistance. Ultimate responsibility for determining whether a particular Record is exempt from FOIA shall rest with the City Attorney.
4. Within twenty-four (24) hours of the receipt of a FOIA Request for a Personnel Record or Employee Evaluation Record, FOIA Staff shall (1) determine whether the Record sought is exempt from disclosure, (2) notify the requestor of that decision, and (3) notify the subject(s) of the request and the decision as to whether or not the Record is exempt from disclosure. If the subject of the request cannot be contacted by telephone or in person within the twenty-four (24)-hour period, FOIA Staff shall send written notice via overnight mail to the subject at his/her last known address.

In the case of Personnel Records, in the notice to the affected employee, FOIA Staff shall also advise that the employee has the right to seek an opinion of the Arkansas Attorney General as to whether the Personnel Records sought are exempt from FOIA. The Attorney General will then have three (3) working days in which to issue an opinion. Should the employee elect to exercise this option, FOIA Staff shall not release the Personnel Record being sought pending the issuance of the Attorney General's opinion.

The City also has the option of seeking an Attorney General's opinion regarding the applicability of FOIA to the Personnel Records sought.

5. Once FOIA Staff determines that the requested record is a Public Record which is subject to FOIA, FOIA Staff shall work with the requestor to determine the means of delivery of the response to the request. FOIA Staff shall not do anything detrimental to the City or City property in the delivery of the Records, *e.g.*, allow a requestor to use an opened flash drive in a City computer. Additionally, the Record shall be open to inspection and copying by the requester during the regular business hours of the City Attorney's Office. FOIA Staff shall ensure that the requester is provided reasonable comforts and facilities for inspection of the Record.

6. If a Record is available at the time the requester asks to examine it, it shall be immediately provided for inspection. If the record is in active use or storage and, hence not available at the time of the request, the Department Director shall certify this fact in writing to FOIA Staff and set a date and hour within three (3) working days at which the record shall be made available for inspection.
7. When FOIA Staff receive an oral FOIA Request, they shall ask the requester to reduce the request to writing. The writing should state specifically the name, address, email address, and phone number of the requester, state the exact date and time of the request, and describe with particularity the Record(s) sought. This is not an absolute requirement. No FOIA Request will be denied just because the requester refuses to reduce the request to writing.

C. General Procedures for all FOIA Requests

1. Any City employee receiving a FOIA Request shall ask the requester to reduce the request to writing. The writing should state specifically the name, address, email address, and phone number of the requester, state the exact date and time of the request, and describe with particularity the Record, or Records, sought. This is not an absolute requirement. No FOIA Request shall be denied simply because the requester refuses to reduce the request to writing.
2. If the requester asks for copies of any Public Record subject to FOIA, the charge for such copies shall be pursuant to the Arkansas Freedom of Information Act. In addition, the City shall require the requester to defray all actual out-of-pocket expenses incurred in reproducing any photographs. Specific fees for reproducing films, tapes, or other forms of data compilation shall be determined on a case-by-case basis. This fee should be paid to the City (or the appropriate department) prior to receipt of the copies or other records. The City (or appropriate department) shall issue a receipt.
3. If at any time the Human Resources Department Director or a Department Director has any questions regarding any particular phase of the FOIA Request process, he/she should immediately contact the City Attorney for assistance.

APPROVED:

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