

## **EXHIBIT A**

### **CITY OF RAINIER PUBLIC RECORDS REQUEST POLICY**

#### **I. PURPOSE:**

The City of Rainier recognizes the right of the public to access certain public records maintained by the City in accordance with the Oregon Public Records Law. The City also recognizes that certain records maintained by the City are not public records or may be exempt from public disclosure and that a request to access public records may require a balancing of the right of the public to access the records, individual privacy rights, governmental interests, confidentiality issues and privilege issues. Additionally, when the City responds to requests to inspect or copy records, costs are incurred by the City. This policy is adopted to 1) balance these competing interests; 2) establish an orderly and consistent procedure for responding to requests to access public records; 3) protect requested records and prevent interference with the regular discharge of duties by City staff; 4) support the adoption of a fee schedule designed to reimburse the City for the actual costs incurred in responding to public records requests; and 5) inform the citizens of the procedures and guidelines that apply to such requests.

#### **II. POLICY:**

It is the policy of the City of Rainier to respond in an orderly, consistent and reasonable manner in accordance with the Oregon Public Records Law to requests to inspect or receive copies of public records maintained by the City of Rainier. If any portion of this policy conflicts with Oregon Statutes, the statute shall prevail.

#### **III. PUBLIC RECORDS:**

The City is required to respond to public records requests by Oregon statute. The Federal Freedom of Information Act (FOIA) does not apply, nor do the time frames associated with FOIA. The City must respond to the request within a reasonable time. What is reasonable depends on the size and complexity of the request, available staff time and resources, and whether legal counsel needs to be consulted prior to disclosing requested information.

A public record is “any writing containing information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.” ORS 192.410(4).

Any record or information that is handwritten, typed, photographed or otherwise recorded, such as letters, words, pictures, sounds, or symbols, and all papers, maps, files, facsimiles or electronic images or recordings may be a public record. Public bodies are not obligated to create new public records where none exists, or to disclose the reasoning behind the public body’s actions. Many requests for information or knowledge are couched as public records requests. A public body does not have to provide knowledge or information, they only have to provide the opportunity to inspect and/or copy public records. If there is a physical object such as a record, letter, file, computer printout, map or other writing, it is likely a public record which can be disclosed unless it falls into one of the

exemptions (see § IV, below). If the information doesn't exist in anything that can be obtained, then it is most likely not a request for a public record.

The City is obligated to provide public records in the format that they exist in. If requested public records are readable only with specific programs or computers, the City must make the program or computer available to view the records. If information exists in one format, such as audio tape, the City is not obligated to provide it in another format, such as a written transcript. At its option, the City may provide an alternative format such as a transcript if the Requestor is willing to pay the charges. This is not applicable to alternative formats to accommodate individuals with disabilities.

Many public records are exempt from disclosure, and most of the exemptions are contained in ORS 192.501 and 192.502. [See § IV, below.]

#### IV. **PUBLIC RECORDS EXEMPT FROM DISCLOSURE:**

A. **SPECIFIC EXEMPTIONS.** There are numerous public records which are exempt from disclosure. Many of these exemptions are set forth in ORS 192.501 and ORS 192.502. A few specific exemptions worth special notice are set forth below.

1. **Personal Safety Exemption – ORS 192.445(1).**  
If an individual requests in writing that a public body not disclose the phone number or address of the individual, the public body is prohibited from disclosing the information if the safety of the individual or family member would be in danger.
2. **Public Records Relating to Pending Litigation – ORS 192.501(1).**  
If a public body is involved in litigation, or if litigation is reasonably likely in the future, the public records relating to the litigation are exempt from disclosure.
3. **Personnel Discipline Actions – ORS 192.501(12).**  
Public records of a discipline action or materials or documents supporting that action are exempt from disclosure.
4. **Personal Privacy Exemption – ORS 192.502(2).**  
Information of a personal nature, such as that kept in a medical or personal file, is exempt from disclosure if disclosure would be an unreasonable invasion of privacy, unless disclosure is proven to be in the public interest by clear and convincing evidence. Personal information includes home address, phone number, weight and age.
5. **Public Employee Addresses, Dates of Birth and Telephone Numbers – ORS 192.502(3).**  
The addresses, dates of birth and phone numbers of public employees and volunteers which are maintained by the public body in personnel files are exempt from disclosure.
6. **Confidential Information Submitted by Citizens – ORS 192.502(4).**  
Information submitted to a public body in confidence and not required to be submitted, where the information should reasonably be considered confidential, and the public body has in good faith obliged itself to keep the information confidential, is exempt from disclosure.

7. Records Deemed Confidential or Privileged under federal or state laws or regulations – ORS 192.502(8) & (9).

Communications between the City’s Legal Counsel and a City Commissioner or staff person are deemed to be privileged and confidential, and are exempt from disclosure.

8. Social Security Numbers.

No social security number should be disclosed without prior consultation with Legal Counsel. If a public record contains a social security number, the number should be blacked out prior to disclosure.

B. COPYRIGHTED MATERIAL

If the City maintains records which contain copyrighted material, the City should permit the Requestor to inspect the copyrighted material but should not make or allow someone else to make copies of the copyrighted material without the written consent of the copyright holder.

V. FEES:

The fee to be charged for providing records in response to a public records request will be in accordance with the fee schedule adopted by the City Council which is in effect at the time the request is submitted to the City. Such fee shall be reasonably calculated to reimburse the City for its actual costs in making the records available and may include:

- A. Reasonable charges for the time spent by City staff or any City contractor to locate the requested public records, to review the records in order to determine whether any requested records are exempt from disclosure or do not constitute public records, to segregate exempt records, to supervise the requestor’s inspection of original documents, to copy records, to certify records as true copies and to send records by special or overnight methods such as express mail or overnight delivery; and
- B. A per page charge for photocopies of requested records.

The City will prepare an estimate of the charges that will be incurred to respond to a public records request. Prepayment of the estimated charges is required before copying any of the requested records or making the records available for inspection or copying. If the actual costs incurred by the City to respond to a records request are less than the amount of any required prepayment, the overpayment will be refunded promptly to the person or entity making the prepayment. If the actual costs incurred by the City to respond to the request are more than the amount of the prepayment, City shall charge the requestor for all such additional costs.

Unless otherwise prohibited by law, the City may, at its discretion, furnish copies of requested records without charge or at a reduced fee if the City determines that the waiver or reduction of fees is in the public interest.

- C. See, Exhibit B, Fee Schedule

## VI. PROCEDURE:

The following procedures shall be followed in responding to requests to inspect or receive copies of public records maintained by the City of Rainier:

- A. CUSTODIAN OF THE RECORDS. The City Administrator is designated the Custodian of the Records (“Custodian”) for all public records in the custody of the City. In her or his absence, a designated staff member shall serve as alternate Custodian.
- B. REQUEST IN WRITING. A request to inspect or obtain copies of a public record in the custody of the City must be made in writing and must specifically identify the requested records. Persons are encouraged to use the standard Public Records Request Form (see Form A attached hereto) provided by the City, although other forms of written requests will be accepted **if** all the information required on the standard form is provided.
- C. DELIVERY OF WRITTEN REQUEST. The written request shall be delivered directly to the Custodian by the Requestor. Delivery can be in person to the Custodian at the City office, 106 West B Street or by mail, by facsimile or via electronic mail, and shall be directed to: The Custodian of the Records, City of Rainier, PO Box 100, Rainier, OR 97048; Tel: 503.556.7301; Fax 503.556.3200; email: [ddudley@cityofrainier.com](mailto:ddudley@cityofrainier.com)
- D. CUSTODIAN DUTIES.
  - 1. Date stamp receipt of the written Request;
  - 2. Attach a Staff Instruction Form, a form Denial Letter and a Final Cost Report (see, Forms B, C and D attached hereto) to the Request. Determine need for Legal Counsel review and forward if required.
  - 3. Contact Requestor within five business days 1) to advise of the estimated costs involved in fulfilling the request (the Department’s designated staff person should forward that information to the Custodian within that time frame); or 2) to advise that additional time is needed to locate the records and/or prepare the estimate; or 3) to advise that the request to inspect the public record(s) is being denied as the record(s) is/are exempt from disclosure, and that a letter explaining the basis of the denial will be sent.

*[Note: No further work should be spent on the request until these costs have been paid.]*

- 4. Contact the designated staff person to advise that the estimated costs have been paid and that he/she should proceed to ready the public record(s) for inspection or to make copies. The original public record(s) or the copies should be forwarded to the Custodian along with a report of the final costs incurred in responding to the request. When the Final Cost Report is received, time spent by the Custodian should be added to arrive at the total cost.
- 5. Contact the Requestor and arrange for inspection of the original public record(s), or for Requestor to pick up the copies, or to confirm the copies are to be mailed, and advise of the

final cost which must be paid before inspection proceeds or the copies are handed over.

6. If an inspection of original public record(s) occurs, the Custodian or his designee, shall be present at all times to supervise the inspection and to ensure that no documents are removed, destroyed or otherwise tampered with.
7. If request was for certified copies, attach the Certification (see, Form E, attached) to the copies before releasing or mailing them.
8. If the request is being denied, the Custodian should prepare a written explanation of the denial (see, Form C, attached) based upon information provided by Legal Counsel, and shall forward the denial to the Requestor.
9. The Custodian shall establish a system to monitor each step of the process in responding to each request to inspect public records(s) to insure that the Requestor is responded to within a reasonable time frame, and shall maintain a copy of each Request and corresponding records related to the City's response, including notes of each contact with the Requestor.

E. DEPARTMENTAL DUTIES.

1. The City Administrator shall review the written Request received and designate one staff person to respond to the Request.
2. The designated staff person shall keep a record of his/her time spent in responding to the request and any applicable costs (see, §V., Fees, above).
3. The designated staff person shall conduct a review to determine what public records, if any, exist which are responsive to the request and to determine if any responsive records may be exempt from disclosure. The City is not required to compile information or create documents related to the requested public record.
4. Once it is determined what responsive public records, if any, exist, the designated staff person should review the request and make an estimate of the expected costs in complying (see Staff Instructions / Estimate, Form B, attached), forwarding a copy of the estimate to the Custodian at the earliest opportunity. If this cannot be completed within four (4) business days, the Custodian should be advised.

*[Note: No further work should be spent on the request until these costs have been paid.]*

5. When the Custodian has advised that the estimated costs have been paid, the designated staff person should proceed to prepare the original public record(s) for inspection, or make the photocopy of the record(s) if copies have been requested.
6. The original public record(s), or the photocopies, if applicable, should be forwarded to the Custodian, along with a final report of costs incurred (see, Final Cost Report, Form D, attached).

F. PLACE AND TIME OF INSPECTION. The City shall provide a reasonable opportunity for the inspection, examination or copying of requested public records which are not exempt from disclosure. Any inspection, examination or copying of requested records shall take place in the City offices during regular City business hours as determined by the Custodian.

G. DENIAL OF PUBLIC RECORDS REQUEST.

1. REVIEW BY COUNSEL. Should either the Custodian or the designated staff person suspect there to be public records involved which are, or may be, exempt from public disclosure, the City's Legal Counsel should be advised and given an opportunity to review the records and make any redactions needed before the records are released for inspection or copying.
2. DENIAL. If the Custodian denies a public record request, a written Denial of Request for Access to Public Record form (see, Form C, attached) should be completed and forwarded to the Requestor citing the statute which exempts the record(s) from disclosure and providing a brief explanation as to how the exemption applies to that particular record(s).
3. APPEAL. If a public record request is denied, the requestor may appeal the decision to the District Attorney with a copy to the City's Legal Counsel (see, Form F, attached). If District Attorney determines that disclosure is appropriate, the City can disclose the records or the City can challenge the District Attorney's decision in court.