

## **TOWN OF SMYRNA OPEN RECORDS POLICY**

### **GENERAL POLICY**

It is the policy and intent of the town to:

(1) Comply with Tennessee's Open Records Law (T.C.A. § 10-7-504 et seq.) by permitting the inspection and copying of the public records of the town.

(2) Provide access to the town's public records, and copies of those records, to public officials charged with legislative and administrative duties under the town's charter or municipal code, and other county, state and federal officials.

Each department head shall be responsible for carrying out this policy. While requests for the inspection and copying of public records of the town shall be handled by the open records coordinator as expeditiously as possible, each department head shall also have the responsibility to:

(1) Preserve the confidentiality of public records that are confidential under the Tennessee Open Records Law (T.C.A. 10-7-504 et seq.).

(2) Protect public records from damage or disorganization.

(3) Balance the allocation of personnel to records inspection and copying duty against the prevention of excessive interference with other essential functions of the town.

### **DEFINITIONS**

In the interpretation and application of this policy, the following terms have the meanings indicated:

(1) "Confidential record" is any record, or part of a record, which is defined by the Tennessee Open Records Law, or other state and federal laws, as being exempt from public inspection, including, but not limited to, those records listed in T.C.A., § 10-7-504.

(2) "Department head" means the town treasurer, the town clerk, police chief, fire chief, the director of public works, the director of utilities, the director of parks, the community service and golf director, the media services manager, the town planner, the building official, the court clerk, the municipal judge, the director of human resources, and any other person designated a department head by the town charter or the municipal code, or his or her designee or designees.

(3) "Public official" means any elected or appointed town official who has legislative or administrative duties prescribed by the town's charter, the town's municipal code, or any ordinance or resolution of the town. It also includes any county, state or federal official who makes a request for the town's records on behalf of the government he or she represents.

(4) "Public record" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance in connection with the transaction of official business by the town.

(5) "Open records coordinator" means the person in the administration department that has been tasked with completing all open records requests, or his or her designee or designees.

### **PROCEDURE FOR INSPECTION OF RECORDS**

Persons and public officials wishing to inspect or copy town records shall make a request for inspection to the department of the town that maintains the records. If the requester does not know which department maintains the records, the request shall be made to the open records coordinator, who will direct the requester to the appropriate department. The request shall be made upon the form prescribed. If the person requesting copies of records or inspection fails or refuses to complete the form, the town employee handling the request shall complete the form with information provided by the requesting party, and shall note that the person requesting the record refused to complete the form.

When voluminous records are requested for inspection, the person requesting access shall make an appointment with the open records coordinator or his or her designee from the department holding the records. Appointments for inspection of records may be for no longer than two (2) hours in one day per request. If further inspection is needed by the requesting party, another appointment may be scheduled. The purpose of this policy is to prevent monopolization of working hours of Town/Town employees and interference with their work duties. Employees shall make every effort to schedule appointments so as to provide full access to the requesting party.

All inspections of records must be performed under the supervision of an employee of the Town.

### **ASSISTANCE IN LOCATION AND DELIVERY OF RECORDS FOR INSPECTION**

All open records requests shall be handled by the open records coordinator, with the exception of requests for accident reports, which shall be handled by the police records department. The Town may, at its discretion, allow other exceptions as well. Any department head who receives an open records request shall forward the request

to the open records coordinator, and shall provide the open records coordinator with the necessary assistance to help locate the requested records. ***To the extent possible, the records requested shall be provided immediately.*** For one of the reasons listed below, if the records cannot be provided immediately, the open records coordinator shall, for records requests made before 11:00 A.M., make a determined effort to provide them by the end of the working day. However, the open records coordinator has the discretion to delay the delivery of the records for inspection, that discretion to be governed and limited by such reasonable variables as: the kind, amount, and nature of the records requested; uncertainty as to what records are requested; the location of the records requested; the format in which the records are requested; the extent of the department head's resources to locate the records at the time the request is made; intervening emergencies, problems, and other events that might reasonably delay the delivery of the records for inspection; and the propensity of the request to create undue disruption of other essential department functions. No employee shall ever unnecessarily delay the delivery of records for inspection. If, by the end of the second working day after the request for records is made, the records are not provided to the requester, the open records coordinator shall notify the requester, and note on the records request the reason for the delay and the approximate date the records will be ready for inspection.

Within seven days of a request for records, the open records coordinator shall:

- (1) Produce the records requested;
- (2) Deny the records in writing, giving an explanation for denial, or,
- (3) In the case of voluminous requests, provide, in writing, the requestor with an estimated time frame for production and an estimation of duplication costs.

#### **THE SPECIAL CASE OF ELECTRONIC RECORDS- GENERAL PUBLIC AND PUBLIC OFFICIALS**

Some public records that are stored, contained or available as data or information within the memory or storage facilities of computer or electronic equipment, might be subject to inspection (and copying) only through the services of town employees familiar with the operation of equipment that facilitates the inspection (or copying). The open records coordinator and department head shall make a reasonable effort to ensure that the records are available for inspection under the same rules governing inspection above. However, where these records create special problems of determining confidentiality of all or some of their parts before they are viewed, or if the requester wants the records in a format different from that contained in the computer, additional delays in the delivery of the records not typical of paper copies of records may occur. The open records coordinator and department head shall keep these delays to a minimum. The department head shall notify the open records coordinator of the approximate length of delay in the delivery of the records for inspection, and the open records coordinator shall enter it on the request for records.

Unless confidential information cannot be obscured from view, the requester may view the information on the town's computer screen. Otherwise, the requester may have the records transferred to a diskette or other compatible storage medium, or request paper copies of such records.

### **LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL RECORDS**

Upon receiving a request to inspect a copy of a public record, the open records coordinator shall grant the request unless he or she determines that the record requested is confidential, in whole or in part, under the Tennessee Open Records Law and/or any other applicable law. In cases of records that are confidential in part, the open records coordinator shall deliver for inspection that part of the record not confidential. Where the open records coordinator is uncertain whether a requested record is confidential, he or she shall as expeditiously as possible consult with the Town Attorney. If after consultation with the Town Attorney, uncertainty still exists, the open records coordinator shall inform the requester that uncertainty exists as to the confidentiality of the record, and on the request indicate the reason for the uncertainty with as much specificity as possible, and the approximate date the uncertainty will be resolved.

If the open records coordinator determines that the record is confidential, he or she shall notify the open records coordinator. The open records coordinator shall specifically supply the requestor with a rejection of the request, noting the reason that the record is confidential and citing, if possible, the statute supporting the confidentiality.

The records of former employees receive the same confidentiality protections as those of current employees. Any information in the personnel file of a current employee that is confidential remains confidential upon and following his or her separation from the town.

The police chief is allowed to segregate personal information about any undercover police officer or member of his or her immediate family. The chief may refuse to release such information if she or she reasonably believes it may endanger the officer or the officer's family. The chief or his or her designee must make the determination when a request to inspect includes personal information about the officer. The chief should consider the totality of the circumstances and decide what of the personal information should be redacted and what should be released. If the chief decides to withhold any information, he or she must give specific justification in writing to the requester within two days and release the redacted file. If the chief decides there is no justification for keeping the personal information confidential, the officer must be notified and given three (3) days to oppose release. When the request is from a business entity, it must also include the name and contact information for a supervisor for verification.

## **COSTS OF INSPECTION—GENERAL PUBLIC AND PUBLIC OFFICIALS**

Generally, there is no charge for the inspection of public records. However, where the public records requested are electronic records, and the records are not in the format requested by the requester and special computer programs must be created to retrieve the records in the requested format, the department head shall estimate the cost of creating the programs, including the time and labor of town employees based upon their hourly pay rate, but not counting Social Security, insurance, and other benefits. The requester shall pay to the town the estimated cost of the special programs before the records are compiled in the requested format. If the cost of the special program exceeds the amount previously paid by the requester, he or she shall pay the balance to the town prior to the inspection of the records in the requested format. If the cost of the special programs is less than the amount previously paid by the requester, the town shall refund to the requester the difference upon the delivery of the records for inspection.

If the requester is a public official, the town council may waive the costs of creating special programs.

## **CUSTODY OF RECORDS**

The town's records shall remain in the physical custody of the department head, and on the department's premises, at all times.

## **PROCEDURE FOR COPYING PUBLIC RECORDS GENERALLY (GENERAL PUBLIC AND PUBLIC OFFICIALS)**

Any requester who has submitted to the town a request for records is entitled to a copy of any record open for inspection. To the extent possible copies shall be made on the town's copying equipment. Where the equipment does not exist, is inoperative, is not designed to copy the records requested, or the requester wants the copies in a format the town's equipment cannot duplicate, the copies may be made on commercial copying equipment.

All copying of public records that is done on the town's copying equipment must be performed by employees of the Town.

No open public records may be removed from the Town office for the purpose of copying, unless by a Town employee. If the public records requested are frail due to age or other conditions, and copying the records will cause damage to the original records, the requesting party may be required to make an appointment for inspection.

## **COST OF COPIES FOR GENERAL PUBLIC—TOWN'S EQUIPMENT**

Requester must pay a per page cost for copies of records. The charge for copies shall be: \$.15 per page for black and white copies, (letter and legal size) and \$.50 for

color copies, (letter and legal size) unless otherwise noted in the fee schedule adopted by the Town. Accident reports are \$.15 per copy. Maps, plats, electronic data, audio discs, video discs, and all other materials shall be duplicated at actual costs to the town.

Payment for the cost of copies shall be made by the requester before the copies are made. The payment shall be based on the approximate number of copies requested. If the actual cost of the copies exceeds the amount previously paid by the requester, the balance shall be paid by the requester before the delivery of the copies. If the previous payment made by the requester exceeds the cost of the copies, the excess shall be refunded to the requester upon the delivery of the copies. The open records coordinator has the discretion to waive payment of costs if the requesting party is indigent or if fewer than three pages of copy are requested. If voluminous copies are requested, the Town reserves the right to take 48 hours, during the work week, to prepare the copies.

### **LABOR COSTS**

There shall be no labor costs for fulfilling requests for inspection of records. Requests for copies requiring less than one hour of municipal employee labor for research, retrieval and duplication is free to the requester. Labor in excess of one hour may be charged by the town, in addition to the cost per copy. The town shall require payment in advance of producing voluminous records. Requests for copies of records may not be broken down to multiple requests for the same information in order to qualify for the first free hour. For requests requiring more than one employee to complete, labor charges will be assessed based on the following formula:

In calculating the charge for labor, a department head shall determine the number of hours each employee spent producing a request, and provide the open records coordinator with that information. The open records coordinator shall then subtract the one (1) hour threshold from the number of hours the highest paid employee(s) spent producing the request. The open records coordinator will then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. The wage should not include benefits. Finally, the open records coordinator will add together the totals for all the employees involved in the request and that will be the total amount of labor that can be charged.

In the event a requestor, after viewing voluminous records requested for inspection, decides to request copies of a portion of those records, the labor cost shall be calculated in proportion to the amount of records requested for copying.

### **FREQUENT AND MULTIPLE REQUESTS**

For purposes of this policy, during each calendar month the open records coordinator may aggregate the number of requests for copies made per requestor. When the total number of requests made to the Town (even if the requests are made to different department of the Town) by a requestor within a calendar month exceeds 4, a records custodian may begin to charge the requestor for any and all labor that is reasonably necessary to produce the copies of the requested records after informing

the requestor that the aggregation limit has been met. Request for items that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month, are exempt from this policy. Additionally, a records custodian may aggregate the total number of public records requests made by a requestor and by any other individual, if the records custodian reasonably believes the requestor to be acting in concert with or as the agent of another person, entity or organization. A records custodian choosing to aggregate requests by multiple requestors must inform the requestors of the determination to aggregate and that they have the right to appeal the decision to aggregate to the Office of Open Records Counsel. When aggregating the labor of multiple requestors, the records custodian must file a Notice of Aggregation of Multiple Requestors with the Office of Open Records Counsel

### **PUBLIC OFFICIALS**

Public officials shall not be charged for copies of records where the total cost prescribed for copies of public records for the general public does not exceed \$25. For records that exceed that cost, public officials shall pay the same costs for public records required to be paid by the general public. The open records coordinator may waive this requirement where the waiver appears in the interest of the town. However, the open records coordinator's authority to make a waiver does not exceed an additional \$30, for a total cost of \$50, for the records. All requests for copies of public records by a public official made within a ten (10) day period shall be treated as a single request for the purpose of calculating the cost of \$25, or \$50 in the case of department heads. The town council may make cost waivers it deems advisable.

### **COST OF COPIES FOR GENERAL PUBLIC—COMMERCIAL EQUIPMENT**

Where the town's copying equipment is incapable of reproducing copies of the records requested, or its copying equipment is inoperative, the open records coordinator shall notify the requester. If the requester decides that he or she wants a commercially made copy of the records, he or she shall notify the open records coordinator, who shall determine the estimated cost of the copies. If the requester desires to obtain the commercial copies, he or she shall pay the estimated cost of the copies. If the actual cost of the copies exceeds the amount previously paid by the requester, the balance shall be paid by the requester before the delivery of the copies. If the previous payment made by the requester exceeds the cost of the copies, the excess will be refunded to the requester upon the delivery of the copies.

### **PUBLIC OFFICIALS**

Public officials shall be charged for copies of commercially copied records under the same procedure prescribed for commercially copied records provided for the general public. The town council may make cost waivers it deems advisable.

## NOTIFICATION TO EMPLOYEES

When a request is made for personnel records of a current employee of the town, the open records coordinator shall ensure that the employee is notified within three days of the request. When the request is for the personnel records of a current law enforcement officer, the notice must include the name, address, and telephone number of the person making the inspection, for whom the inspection was made, and the date of the inspection, and the notice should go to the police chief as well as the employee.

## REDACTION

Confidential personnel information as listed in T.C.A. 10-7-504(f) and all future amendments, and any future relevant public acts, shall be redacted. At this time, this includes, but is not limited to, the following:

(1) Driver's license numbers if:

- (A) it is the current or former employee or family member's driver's license number in the personnel file (unless driving is part of duties or description)
- (B) it is on an accident report
- (C) the number comes from the motor vehicle database

If the driver's license number does not come from the motor vehicle database, it does not have to be redacted.

(2) The following records or information of any state, county, municipal or other public employee, or of any law enforcement officer commissioned pursuant to § 49-7-118, in the possession of a governmental entity or any person in its capacity as an employer shall be treated as confidential and shall not be open for inspection by members of the public:

- (A) Home telephone and personal cell phone numbers;
- (B) Bank account information;
- (C) Social security number;
- (D) (i) Residential information, including the street address, city, state and zip code, for any state employee; and
  - (ii) Residential street address for any county, municipal or other public employee;
- (E) Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job; and
- (F) The information listed in 2(A)-(E) of immediate family members or household members.
- (G) (1) (A) (i) All law enforcement personnel information in the possession of any entity or agency in its capacity as an employer, including officers



commissioned pursuant to § 49-7-118, shall be open for inspection as provided in § 10-7-503(a), except personal information shall be redacted where there is a reason not to disclose as determined by the chief law enforcement officer or the chief law enforcement officer's designee. For purposes of this section, personal information shall include the officer's residential address, home and personal cellular telephone number; place of employment; name, work address and telephone numbers of the officer's immediate family; name, location, and telephone number of any educational institution or daycare provider where the officer's spouse or child is enrolled.