

**City of Bridgeport FOIA
Proposed Policy & Fee Schedule
Effective 1/17/2013**

1. Purpose

The purpose of this policy is to standardize the procedures within the City of Bridgeport (City) associated with processing Freedom of Information Act (FOIA) requests, except as otherwise directed by the City Manager.

2. Scope

This policy applies to all employees of the City and any individual or organization charged with producing City FOIA responses and contracted organizations and individuals as their contracts may require compliance with this policy or City policies.

3. Applicable W. Va. Code / List of Exemptions

West Virginia Code, Chapter 29B, "Freedom of Information" (Appendix A)

4. Definitions

The definitions below are applicable unless the context in which the defined words are used clearly requires a different meaning.

- ❖ **Addressee:** The person to whom the FOIA Request is addressed. All FOIA Requests should be submitted using the City of Bridgeport Freedom of Information Request form (via email or mail) or by telephone to the City Clerk.
- ❖ **Legal Counsel:** An attorney or law firm designated by the City Manager.
- ❖ **Record:** Any writing including any books, papers, maps, photographs, cards, emails (up to 30 days from request date) or other documentary materials containing information relating to the conduct of the public's business, prepared, owned, retained by, or subject to the control of, the City. All personnel emails are therefore exempt.
- ❖ **Request:** A request that is either submitted using the City of Bridgeport Freedom of Information Request form or via telephone to the City Clerk. A City of Bridgeport Freedom of Information Request form should be completed for every request and kept on file.
- ❖ **Requester:** The person requesting a FOIA response.

5. Dispositions of a FOIA Request

The disposition of a FOIA request may be resolved by:

- ❖ Notifying the Requester that the Request lacks reasonable specificity for fulfillment;
- ❖ Notifying the Requester that the requested Records are not possessed by the City;
- ❖ Notifying the Requester where the requested Records may be obtained from the City's website or other websites if the information is already in existence in a public forum;
- ❖ Notifying the Requester of the time and place at which he or she may inspect and request copies of Records. Responses to such Requests will be in accordance with the law and, except where it may be inapplicable, this policy. Consult Legal Counsel if guidance is needed;
- ❖ Furnishing copies of the requested Records in accordance with the law and this policy;

- ❖ Responding to the Requester, as provided in Section 6 of this policy, when the requested Records are relevant to a suit or grievance against the City; or
- ❖ Denying the Request, in whole or in part, and providing the Requester with a written statement containing the information in Section 7 of this policy. A copy of the denial shall be maintained in the office of the City Clerk for retention for one year, unless law or other policy requires a longer period.

6. Time to Respond to a FOIA Request; Request for Extension

Time to Respond

- ❖ A response fulfilling or denying a FOIA Request or reasons why the FOIA request may not be provided must be made within five days of receipt of the Request Form by the City Clerk, not including the day of receipt, Saturdays, Sunday, and legal holidays.

Request for Extension

- ❖ If the City determines that the requested Records cannot be retrieved and copied before the response is due, the City Clerk:
 - Processes the Request in conformance with this policy;
 - Attempts to contact by telephone or email the Requester to:
 - Provide any fee information required by Section 8;
 - Explain why the response cannot be timely prepared;
 - Provide an estimated time when the response will be ready, and
 - If the request for an extension is refused, proceed to provide the response as soon as practicable.
- ❖ Sends a letter or email to the Requester documenting any telephone conversation, including any fee information.
- ❖ If there was no telephone or email reply, sends a letter to the Requester containing the information and request that would have been provided in the telephone call.

7. Processing of Requests Received by the City Clerk

FOIA Requests should be addressed to the City Clerk, as the sole Addressee:

- ❖ If the Request is related to a potentially controversial or sensitive matter, the City Clerk sends a copy of the Request (or forwards the email or voicemail) to Legal Counsel, if the Requester did not address or copy them.
- ❖ If it is known that the requested Records relate to a suit or grievance against the City, the City Clerk hand-delivers or faxes a copy of the Request (or forwards the email or voicemail) to the attorney defending the City and inquires if a FOIA response should be prepared or whether the attorney will respond as part of the suit or grievance.
- ❖ If the Request is routine, it may require Legal Counsel to approve the response when it is prepared; and, as appropriate, the City Clerk consults with him or her regarding:
 - The drafting of the response letter and any Records that may be exempt from disclosure under the West Virginia FOIA, W. Va. Code 29B-1-4, other provision of law, court orders, or court recognized privileges, such as attorney-client attorney work-product, deliberative process, etc.; and

- If the response will be a denial of the Request, in whole or in part, inclusion of statements that notify the Requester:
 - The reasons for the denial. (The City is not required to prepare a Vaughn index, which lists all of the records that the City is not producing due to the applicable exemptions. In *Farley v. Worley*, 215 W. Va. 412, 599 S.E.2d 835 (2004), the Supreme Court of Appeals of West Virginia made this distinction clear. “In other words, the Vaughn index is implicated by FOIA litigation – not by a FOIA denial.” ID., at 426, 849.)
 - That the Requester may institute proceedings in the Circuit Court of the jurisdiction where the Records are kept, i.e., the Circuit Court of Harrison County, West Virginia.
- Makes an estimate of the fee to be charged based on the fees established in Section 8 of this policy;
- Takes the following action when the estimated fee is more than \$5.00 and the Requester did not include in his or her Request an agreement to pay an amount equal to or greater than the estimated fee:
- Attempts to telephone or email the Requester to inform him or her:
 - Of the estimated fee and requests agreement of the Requester to pay that fee;
 - That the exact fee will be communicated to him; or
 - That no copies of Records will be released until the fee is paid; and
- Sends a letter or email to the Requester to:
 - Confirm any agreement of the Requester to pay the estimated fee; or
 - If the Requester refused to pay the fee, or if there was no telephone conversation or email reply, inform the Requester of the estimated fee and that nothing further will be done regarding the Request until the Agency receives agreement to pay the estimated fee.
- ❖ Determines the exact fee in accordance with Section 8 of this policy;
- ❖ Drafts the response letter and obtains the review and approval of the Response by Legal Counsel, unless he or she has stated that such is not necessary.
- ❖ Signs the response letter or requests Legal Counsel to sign it;
- ❖ Telephones or email the Requester (or, if the Requester cannot be reached by telephone, sends a letter) and informs him or her of the fee and that the response to the Request will be held until payment is received by check or money order made payable to The City of Bridgeport; and
- ❖ When the fee is received, sends the fee to Finance Director, mails or emails the response to the Requester, and files a complete copy of the response for one year, unless law or other policy requires a longer period.

8. Fees

Research Fee:

- ❖ \$35 per hour
- ❖ Minimum of one hour charge per request
- ❖ The hourly rate will be based on fifteen (15) minute increments and prorated accordingly after the first hour has been charged.

Copy Fee:

- ❖ Black & White copies - \$0.25 (Twenty-five cents) per page printed on 8.5" x 11" or 8.5" x 14" paper.
- ❖ Color copies - \$1.00 (One dollar) per page printed on 8.5" x 11" or 8.5" x 14" paper.

Maps, Large Scale Printing:

- ❖ 8"x 11" \$15.00
- ❖ 11"x 17' \$30.00
- ❖ 24"x 36" \$40.00
- ❖ 36" x 48" \$60.00

Sales Tax:

- ❖ Applicable taxes will be applied to all requests/orders.

Postage/Shipping/Handling:

- ❖ Will be charged at cost and will be sent according to the instructions of the Request.

Payment:

- ❖ All fees must be paid prior to receiving requested material. There are no exceptions.

Fee Waiver

- ❖ A request for a fee waiver may be made on the City of Bridgeport Freedom of Information Request form. An explanation is required for a fee waiver. Any waiver of fees will be at the discretion of the City Manager.

CITY OF BRIDGEPORT
Freedom of Information Request

Requester's Name: _____

Requester's Telephone Number: _____

Requester's Address: _____

City: _____

State: _____

Zip: _____

Fax Number: _____

Email: _____

Records sought (be specific). If known, you should include any file designations or descriptions for the records that you might want:-

Signature: _____

Date: _____

Description of Requestor (Required Field):

- Individual seeking information for personal use.
- Affiliated with a private corporation and seeking information for use in the company's business.
- A representative of the news media (press and this request is made as part of a news gathering and not for commercial use)
- Affiliated with a public interest group and this request is not for commercial use.
- Fee Waiver Requested (if selected, an explanation is required):

Please submit this form via email or mail to:
akerr@bridgeportwv.com

Office of the City Clerk
City Hall
515 West Main Street
Bridgeport, WV 26330

APPENDIX A

WEST VIRGINIA CODE

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

§29B-1-2. Definitions.

As used in this article:

- (1) "Custodian" means the elected or appointed official charged with administering a public body.
- (2) "Person" includes any natural person, corporation, partnership, firm or association.
- (3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.
- (4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.
- (5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1-3. Inspection and copying.

- (1) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.
- (2) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.
- (3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall

make such copies available on magnetic or electronic media, if so requested.

(4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(a) Furnish copies of the requested information;

(b) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records.

§29B-1-4. Exemptions.

(a) The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: *Provided*, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222; and

(19) Records of the Division of Corrections, Regional Jail Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be utilized by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

- (2) Influence the policy of a branch or level of government by intimidation or coercion;
- (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) Nothing in the provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section should be construed to make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

§29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

§29B-1-6. Violation of article; penalties.

Any custodian of any public records who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for not more than twenty days, or, in the discretion of the court, by both fine and imprisonment.

§29B-1-7. Attorney fees and costs.

Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to section five of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.