

ORDINANCE NO. 1810

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 1.14 ENTITLED "PUBLIC RECORDS"

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Oak Harbor Municipal Code Chapter 1.14 entitled "Public Records", last amended by Ordinance No. 1714 (2015), is hereby amended to read as follows:

**Chapter 1.14
PUBLIC RECORDS**

Sections:

- 1.14.010 Purpose.
- 1.14.020 Definitions.
- 1.14.030 Records subject to disclosure.
- 1.14.040 Index of public records not maintained.
- 1.14.050 Form and manner of request for public records.
- 1.14.060 Submittal of a request for public records – Designation of public records officer.
- 1.14.070 Initial response to request.
- 1.14.080 Supplemental response to request – Additional time – Clarification.
- 1.14.090 Disclosure of records – Process.
- 1.14.100 Final response to request.
- 1.14.110 Copying and delivering – Costs.
- 1.14.120 Deposit for copying.
- 1.14.130 Payment of required fees.
- 1.14.140 Denial of request – Appeal.

1.14.010 Purpose. The purpose of this chapter is to establish the process for requesting public records and responding to requests for public records as required by Washington’s Public Records Act, codified in Chapter 42.56 RCW. Failure of the city to fully comply with any provision of this chapter shall not result in any liability imposed upon the city other than as provided in the Public Records Act.

1.14.020 Definitions.

- (1) For the purposes of this chapter, the following terms shall be defined as follows:
 - (a) “Public Records Act” shall mean Chapter 42.56 RCW as currently enacted or hereafter amended.
 - (b) “Copies” shall mean any duplicated version of any record regardless of the original form of the record.
- (2) Except as provided in subsection (1) of this section, all terms used in this chapter shall have the same meaning as set forth in the Public Records Act.

1.14.030 Records subject to disclosure. The city need only disclose records or portions of records to the extent required by the Public Records Act, and nothing in this chapter shall be interpreted as requiring the disclosure of any record that is not subject to disclosure by the Public Records Act or other applicable law. Records or portions of records may be withheld or redacted to the extent necessary or permissible by law. A list of exemptions and prohibitions against disclosure is available in the public records officer’s office, upon request. The city shall not be required to create records or documents in response to a request for public records that do not exist at the time the request is made. A public records request is not continuing in nature, and will not be treated as such even if requested. In the event additional records are created after the date of the requester’s original public records request, the requester will be required to submit a new request for the later created records.

1.14.040 Index of public records not maintained.

- (1) In General. The Public Records Act requires all cities and public agencies to maintain and make available a current index of certain public records. However, the Public Records Act also provides that if maintaining such an index would be unduly burdensome, or would interfere with agency operation, a city need not maintain such an index but it must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome.
- (2) Findings. The city of Oak Harbor is comprised of eight departments and many departments consist of several subdivisions. Each individual subdivision of the city performs a unique public service. Each subdivision may also utilize and produce various forms of “writings” as that term is defined in the Public Records Act, and thousands of writings are produced or utilized each day by these subdivisions. These writings may be maintained in several formats including, but not limited to: paper records, computer files, photographs, audio recordings, video recordings, and others. Filing systems vary from division to division due to different paper filing systems and the various computer programs used by each subdivision. Also, subdivisions of the city are physically located at various places within the city. As such, it is unduly burdensome, if not impossible, and

would detract from the purpose of providing essential services to the citizens of Oak Harbor, to provide a current index of public records as set forth in RCW 42.56.070.

- (3) Order. The Oak Harbor city council orders that the city shall not maintain a current index of public records as set forth in RCW 42.56.070 based upon the findings set forth in subsection (2) of this section; provided, that the city shall make available for review or copying any indexes that are maintained for city use to the extent not exempt from review or copying.

1.14.050 Form and manner of request for public records.

- (1) For purposes of ensuring accuracy and efficiency in filling records requests, the city prefers that requests for public records be made in writing and delivered in person, by mail or email, or through the city's online public records request form that may be made available on the city's Internet website.
- (2) The city will provide a public records request form that may be used by those requesting public records. The public records request may be submitted on the form provided by the city or in another written format. The following information will assist the city in efficiently processing and filling the records request:
 - (a) The date of the request;
 - (b) The name of the requester;
 - (c) The full address of the requester;
 - (d) The full email address of the requester;
 - (e) The telephone number of the requester;
 - (f) A complete description of the requested record;
 - (g) The title and date of the requested record, if known;
 - (h) The location of the requested record, if known; and
 - (i) Whether the requester intends to review the records or obtain a copy of the records.
- (3) If the requester chooses to not provide the city with any contact information, the city will prepare a response that is consistent with this chapter. If a five-day letter is necessary, the city shall have it ready for the requester to collect at City Hall on the fifth business day, unless the requester provides sufficient contact information to the city. If a five-day letter or responsive records prepared within five days of the request are not picked up by the requester within 30 days of the date of the original request, the request and all other future installments (if any) shall be considered closed.
- (4) If a requester intends to make an oral records request, the requester must contact the city's public records officer or designated records coordinator. The designated city employee shall write the request as he/she understands it and confirm it with the requester. If the employee is unsure of the oral request, the city may seek written clarification within five business days. If the requester does not provide sufficient

clarification to the request for clarification within 30 days of the original request, the request will be closed.

1.14.060 Submittal of a request for public records – Designation of public records officer.

- (1) The city administrator has the authority to designate the city of Oak Harbor's public records officer (RCW 42.56.580). The public records officer's contact information can be found on the City's website on the public records webpage at www.oakharbor.org.
- (2) The public records officer will oversee the City's compliance with public records disclosure requirements. Members of the public may direct requests for disclosure of public records to the public records officer.
- (3) In order to provide for a more efficient response to requests for public records, the city has designated various records coordinators throughout the city as described in subsections (3)(a) through (c) of this section who may receive and respond to public records requests directly. If the record requested is not identified in subsections (3)(a) through (c) of this section, or the requester is unsure of where to file the request, the request shall be filed with the public records officer.
 - (a) The records coordinator of the police department may receive and respond to a request to inspect and/or photocopy police reports and police department records. The request shall be delivered to the Oak Harbor Police Department at 860 SE Barrington Drive, Oak Harbor, WA 98277.
 - (b) The records coordinator of the fire department may receive and respond to a request to inspect and/or photocopy fire reports and fire department records. The request shall be delivered to the Oak Harbor Fire Department at 855 E Whidbey Avenue, Oak Harbor, WA 98277.
 - (c) The records coordinator of the planning/building department may receive and respond to a request to inspect and/or photocopy planning department files which the records coordinator, in his/her discretion, determines are readily available and easily accessible to the requester without the expenditure of significant staff time. In the event the records coordinator believes the request cannot be fulfilled without staff impacts or cannot be fulfilled within five business days, then he/she shall transmit the request to the public records officer for fulfillment.

1.14.070 Initial response to request.

- (1) The city shall make an initial response to the request for public records within five business days of receipt of the request. Business days do not include Saturdays, Sundays, or city-observed holidays. In the event a request for public records is received after 5:00 p.m., the request shall be deemed to have been received on the next business day. Depending upon the nature of the request, the city may respond initially by:

- (a) Providing the record, or the disclosable portions of the record, for review, or a copy thereof if requested after payment of applicable fees;
- (b) Acknowledging the city's receipt of the request accompanied by a reasonable estimate of the time necessary to respond to the request; or
- (c) Denying the request.

1.14.080 Supplemental response to request – Additional time – Clarification.

- (1) From time to time, the city will need additional time to respond to a request for records. For example, additional time may be necessary due to the volume of requests received by the city, the complex nature of requests, the breadth of a request and need to search in order to locate and assemble responsive records, notify third persons or agencies affected by the request, determine whether any records or portions of records are exempt from disclosure, or determine whether denial should be made to the disclosure of all or a part of the requested records. In the event additional time is needed, the city will take reasonable steps to advise the requester of the additional time necessary and the reasons for the required extension.
- (2) At the time of the city's initial response, or subsequent to the city's initial response, the city may require the requester to clarify his/her request in order to provide the city with information sufficient to allow the city to determine which records are being requested and whether such records relating to the request exist. Clarification of records will be processed pursuant to RCW 42.56.520(1)(d) and (3)(b).

1.14.090 Disclosure of records – Process.

- (1) Copies of Records. In the event a requester requests copies of records, the records shall be copied pursuant to the terms of this chapter.
- (2) Review of Records. In the event a requester chooses to review records, the city shall notify the requester once the records which respond to the request are available for review. The records will be available for review at reasonable dates and times as determined by the public records officer after consultation with the requester. Appointments to review records may be broken into intervals so as to not excessively interfere with the city's provision of other essential services. Records that have been retrieved for review shall be made available to the requester for an initial period of 30 calendar days. This period may be extended upon agreement of the public records officer and the requester in order to provide a reasonable amount of time to inspect the records. In the event the requester fails to contact the public records officer to arrange to review the records within 30 calendar days of being notified that the records are available for review, the records request shall be deemed satisfied and closed, the records shall be returned to the originating department, and if the requester wishes to review the records,

he/she will be required to submit a new request for the records and the process will begin anew.

- (3) Partial or Installment Basis. If the city determines that records responsive to a public records request are voluminous, the city may make the records available for review or copying on a partial or installment basis as the records are assembled and become available for review or duplication. An installment of records that has been copied shall be made available to the requester for an initial period of 30 calendar days. This period may be extended upon agreement of the public records officer and the requester in order to provide a reasonable amount of time to inspect the records. In the event a requester fails to retrieve an installment of copied records, or to contact the public records officer to arrange to review an installment of records within 30 calendar days of being notified that the records are available for review, the records request shall be deemed satisfied, the records shall be returned to the originating department, and if the requester wishes to obtain the records, he/she will be required to submit a new request for the records and the process will begin anew.
- (4) Format of Records. Any records or portions of records disclosed by the city will be provided to the requester in the same format as they are retained; provided, that any disclosable records contained on a computer or other electronic or mechanical device shall, at the discretion of the city, be provided in printed form, on disk, or in another format. If the requester specifies a format in which the records should be disclosed, the city will disclose the records in the requested format if: (a) it is determined that disclosable records exist, (b) the city is capable of providing the records in the format requested within its existing means, (c) the format requested is reasonable, and (d) the requester pays all costs associated with providing the records in the format requested. The costs associated with providing records in the format requested by the requester shall be the actual cost to the city of providing the records in the format requested.
- (5) If the requester does not respond to any of the city's responses to receive all or installments of the request, the request will be closed 30 days from receipt of the request.

1.14.100 Final response to request. The city's response to a request for records shall be deemed complete and final upon:

- (1) Requester's inspection of the records; or
- (2) Notification to the requester that the copies requested are available for payment and pick-up; or
- (3) Delivery by electronic mail of electronic records; or
- (4) As allowed in OHMC 1.14.090(3), the requester's inspection of the final installment, notification that the final installment copies are ready for pick-up or payment, delivery by e-mail of the final installment, or by deposit into the U.S. Mail of the final installment; or

- (5) Notification to the requester that no records could be reasonably located which are responsive to the request; or
- (6) Upon the city administrator's determination of any appeal filed under OHMC 1.14.140.

1.14.110 Copying and delivering – Costs.

- (1) Consistent with the provisions in Chapter 42.56 RCW, the city shall charge for the costs incurred in copying and delivering public records, including costs to scan paper records into an electronic format. In the event a requester requests copies of records, prior to the disclosure of any public record, copying costs shall be collected. The public records officer shall establish, update, and post applicable copying costs as appropriate. The public records officer shall have the department's cost schedule available for inspection upon request. If copied records are provided on an installment basis as set forth in OHMC 1.14.090, the city may charge the requester for those copying costs as they accrue in making each installment available.
- (2) The requester shall pay all costs associated with the cost of delivering records.
- (3) Payment of copying and delivery fees shall be made prior to the disclosure of public records. When required pursuant to OHMC 1.14.120, the payment of a deposit shall be made prior to the copying of any records.(4) The City of Oak Harbor finds that calculating the actual cost of scanning per page in order to fulfill a public records request would be unduly burdensome for the following reasons:
 - (a) The City employs over 150 employees. Because all City employees contribute to the production of public records requests and all employees earn different salaries or rates of pay, the public records officer would have to be privy to salaries of all employees in order to calculate the invoice;
 - (b) Employees supplying scanned records to the public records officer would be required to track time spent, thereby creating a burden for those employees without work stations as well as additional work not assigned in many employees' job descriptions and/or union contracts;
 - (c) The City's public records officer would be required to maintain a record of all employees who contributed to each part of a public record request and potentially charge different amounts for multiple scanned pages;
 - (d) The City uses more than ten document scanning machines with different costs and lease agreement fees which change from time to time. The cost of supplies for the City's various scanning machines is subject to change based on current market rates. Calculating the portion of the machines and supplies used toward scanning public records would require knowledge of the cost of supplies and an in-depth

analysis of timing and application multiplied by each contributing employee's hourly rate of pay; and

- (e) The response time to a public records request may be delayed in order to calculate scanning costs and create an invoice with different rates of scanning charges.

The City will charge for scanned pages as allowed under RCW 42.56.120.

1.14.120 Deposit for copying. The city may, in its discretion, require the requester to deposit a sum equal to 10 percent of the estimated copying cost prior to duplication of the records. In the event a deposit is required, the city will notify the requester of the necessity of the deposit. Any deposit shall be made in accordance with OHMC 1.14.130. In the event the actual copying costs are less than the amount deposited by the requester, the city will return the sum in excess of the actual amount to the requester.

1.14.130 Payment of required fees. The payment of all costs associated with this chapter shall be made by cash, credit card, money order, or check (payable to the city of Oak Harbor). Payment shall be made in person at the Finance Department Utility Office located at 865 SE Barrington Drive, Oak Harbor, WA 98277, by mail to the Finance Department Utility Office at 865 SE Barrington Drive, Oak Harbor, WA 98277, or by calling the Finance Department Utility Office at (360)279-4530.

1.14.140 Denial of request – Appeal. In the event the city clerk denies a request, or any portion of a request for public records, the requester may appeal the denial to the city administrator. The city administrator shall review the public records officer's response and issue a decision upholding or reversing the denial of the request, in whole or in part, within five (5) business days of the receipt of the appeal, or within such other time as may be agreed upon with the requester. Upon completion of the appeal process, the city's response will be deemed final.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder or the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication.

PASSED by the City Council this _____ day of _____, 2017.

THE CITY OF OAK HARBOR

By _____
Robert Severns, Mayor

Dated: _____

Attest:

Nicole Tesch, Deputy Clerk

Approved as to Form:

Nikki Esparza, City Attorney

Published: _____