

CITY OF OBERLIN, OHIO

ORDINANCE NO. 19-83 AC CMS

AN ORDINANCE AMENDING THE PUBLIC RECORDS POLICY FOR THE CITY OF OBERLIN, OHIO, AND DECLARING AN EMERGENCY

WHEREAS, Ohio Revised Code Section 149.43 requires that all public offices adopt a public records policy regarding the availability and maintenance of public records and proper response to public records in compliance with ORC Section 149.43; and

WHEREAS, the City of Oberlin passed Ordinance No. 07-81 CMS on October 2, 2007, which adopted a Public Records Policy for the City of Oberlin; and

WHEREAS, Council for the City of Oberlin desires to amend the Public Records Policy to assure that current practices are accurately reflected in the Policy and are otherwise in compliance with current law.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio:

SECTION 1. That the amended Public Records Policy for the City of Oberlin, Ohio, attached as Exhibit A and incorporated herein is hereby approved with all provisions taking effect upon passage.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit: *to update the Public Records Policy as soon as possible to ensure the orderly and efficient operation of the municipality* and shall take effect immediately upon passage; and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect at the earliest period allowed by law.

PASSED: 1st Reading: December 16, 2019 (E)

2nd Reading: _____

3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: 12/17/2019

EFFECTIVE: 12/16/2019

**Ordinance No. 19-83 AC CMS
Exhibit A**

**CITY OF OBERLIN, OHIO
PUBLIC RECORDS POLICY**

Introduction:

It is the policy of the City of Oberlin, Ohio, that openness leads to a better-informed citizenry, which leads to better government and better public policy. It is the policy of the City of Oberlin, Ohio, to strictly adhere to the state's Public Records Act.

Section 1. Public Records

The City of Oberlin, in accordance with the Ohio Revised Code, defines records as including the following: Any document – paper, electronic, including but not limited to, e-mail, text messages or other electronic communications – that is created or received by, or comes under the jurisdiction of a public office that documents the organization's functions, policies, decisions, procedures, operations, or other activities of the office. All records are public unless they are specifically exempt from disclosure under the Ohio Revised Code.

Section 1.1

It is the policy of the City of Oberlin that, as required by Ohio law, records along with current retention schedules will be organized and maintained so that they are readily available for inspection and copying.

Section 2. Record/Inspection requests

Each request for public records or for inspection should be evaluated for a response using the following guidelines:

Section 2.1

Although no specific language is required to make a request, the requester must identify the records requested with sufficient clarity to allow the records custodian to identify, retrieve, and review the records. If it is not clear what records are being sought, the records custodian must contact the requester for clarification, and should assist the requestor in revising the request by informing the requester of the manner in which the City office involved keeps its records.

- The records custodian is the office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

Section 2.2

The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. It is the City's general policy that this information is not to be requested.

Section 2.3

Public records are to be available for inspection at all reasonable times during the regular business hours of the office of the records custodian. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. The terms "prompt" and "reasonable" shall take in to account the volume of records requested, the proximity of the location where the records are stored, the necessity for any legal review of the records requested, and/or redaction of the records requested.

Section 2.4

All requests for public records must either be satisfied (see above) or be acknowledged in writing or electronically as soon as is practicable. An oral response shall satisfy the requirement of a receipt when the requestor does not provide an email or postal address. If a request is deemed significantly beyond "routine," such as seeking a voluminous number of copies or requiring extensive research, the acknowledgment should include the following:

- An estimated number of business days it will take to satisfy the request.
- An estimated cost if copies are requested.

Section 2.5

Any denial of public records requested must include an explanation, including legal authority where applicable. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

Section 2.6

Persons requesting copies of public records are not permitted to make their own copies of the requested records by any means or remove them from the City's facilities.

Section 2.7

The City requires that an employee be present during an inspection of a public record to assure the preservation and integrity of the record.

Section 3. Costs for Public Records

Those seeking public records will be charged only the actual cost of making copies.

Section 3.1

The charge for paper copies shall be five (\$.05) per page. The charge may be waived when less than one dollar (\$1.00)

Section 3.2

The charge for computer files downloaded to a compact disc is \$1.00 per disc.

Section 3.3

The charge for oversized copies (such as maps, drawings, etc.) is \$2.00 per page.

Section 3.4

There is no charge for documents that are transmitted electronically (i.e., e-mailed; facsimile).

Section 3.5

For video tapes, cassette tapes or any other type of media, the fee shall be \$5.00, or the actual reproduction cost, if a commercial service is utilized.

Section 3.6

Requesters may ask that documents be mailed to them. They will be charged the actual cost of the postage and mailing supplies, or other actual cost of delivery.

Section 3.7

The City may require payment prior to providing copies of the requested records.

Section 3.8

Established fees/costs shall be clearly posted and available to the public.

Section 4. Handling Electronic Records

Documents in electronic format are records as defined by the Ohio Revised Code when their content relates to the business of the office.

Section 4.1

Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held communications device are to be treated in the same fashion as records in other formats, such as paper or audiotape.

Section 4.2

Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of the City are required to retain their email records and other electronic records in accordance with applicable records retention schedules.

Section 4.3

Storage devices and systems for storing electronic records throughout the records retention lifecycle must meet the following requirements.

- Permit easy retrieval in a timely fashion.
- Retain records in an accessible format until their authorized disposition date

Section 5. Records Disposition/Transfer

Records may be destroyed, but only if they are destroyed in compliance with a properly approved records retention schedule. It is important to document the disposition of records after they have satisfied their approved retention periods. Once a Certificate of Records Disposal (RC-3) has been approved by the City Records Commission the request for disposition must be filed with the State Archives at the Ohio History Connection at least fifteen business days prior to the destruction in order to allow the State Archives to select records of enduring historical value. Regardless of whether or not it is necessary to submit an RC-3 to the State Archives, it is important that the City internally track records disposals in accordance with guidelines established by the Records Commission.

Section 5.1

Records retention schedules are also available on the City of Oberlin's website at www.cityofoberlin.com and the Oberlin Clerk of Council's office located at 85 South Main Street in Oberlin, Ohio 44074.

Section 5.2

All records are the property of the municipality and must be delivered by outgoing City officials and employees to their successor in office. Improper removal, destruction, damage or other disposition of a record is in violation of R.C. 149.351(A).

Section 5.3

All records pertaining to ongoing or pending audits, lawsuits (or even reasonably anticipated lawsuits), or public disclosure proceedings are said to be on destruction hold and must not be altered or destroyed until the hold has been lifted and the records have met their retention period.

Section 5.4

All records are transferred in compliance with rules established by the City of Oberlin Records Commission.

Section 6. Failure to respond to a public records request

Ohio law allows “any person who is aggrieved by” the unauthorized “removal, destruction, mutilation, transfer, or other damage or disposition of a record, or by the threat of such action, to file either or both of the following types of lawsuits in the appropriate common pleas court:

- A civil action for an injunction to force the public office to comply with R.C. 149.351(A), as well as any reasonable attorney fees associated with the suit.
- A civil action to recover a forfeiture of \$1,000 for each violation of R.C. 149.351 (A), not to exceed a cumulative total of \$10,000 (regardless of the number of violations), as well as reasonable attorney fees associated with the suit, not to exceed the forfeiture amount recovered.

Section 8. Training and Education

The City will continue to update and address all education, training, disclosure, and policy requirements mandated by the Ohio Revised Code.

Section 9. Posting of this Policy

Each City records custodian shall retain a copy of this City Records Policy along with the applicable Schedules of Records Retention and Disposition. These documents shall be located at every City facility in which the public may access the City’s records; and the City shall prominently display by posters a description of the City’s public records policy at various buildings where the public may access the City’s public records.