

ORDINANCE NO. 1094

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING RULES FOR HANDLING PUBLIC DISCLOSURE REQUESTS, DEFINING A PUBLIC RECORD, DESIGNATING THE CITY'S PUBLIC RECORDS OFFICER, DESCRIBING THE PROCESSING OF A PUBLIC DISCLOSURE REQUEST, DESCRIBING THE INTERNAL REVIEW OF A DENIAL OF A REQUEST, LISTING THE COSTS ASSOCIATED WITH COPYING AND PROCEDURES FOR INSPECTION, ADDING A NEW CHAPTER 2.52 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City is required by law to establish procedures to provide full public access to non-exempt public records, to protect public records from damage or disorganization, to prevent excessive interference with agency functions, to ensure timely action on requests (RCW 42.56.090, .100); and

WHEREAS, the City's SEPA Responsible Official issued a threshold determination of non-significance for this Ordinance on June 14, 2007; and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of June 25, 2007; and

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new chapter 2.52 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 2.52 Disclosure of Public Records

- 2.52.010 Authority and Purpose.**
- 2.52.020 Scope of Coverage of Public Records Act and Definitions.**
- 2.52.030 Non-liability for Disclosure.**
- 2.52.040 Agency Description – Contact Information – Public Records Officer.**
- 2.52.050 Availability of Public Records.**
- 2.52.060 Retention of Records.**
- 2.52.070 Processing of Public Records Requests – General.**
- 2.52.080 Obligations of Requestors.**
- 2.52.090 Exemptions.**
- 2.52.100 Costs of Providing Public Records.**
- 2.52.110 Review of Denials of Public Records.**

2.52.010. Authority and purpose.

A. RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency. In addition, the Act requires that the City adopt and enforce reasonable rules and regulations to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the City. RCW 42.56.100.

B. The purpose of this chapter is to establish the procedures the City of Gig Harbor will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the City and establish processes for both requestors and City of Gig Harbor staff that are designed to best assist members of the public in obtaining such access.

2.52.020. Scope of Coverage of Public Records Act and Definitions.

A. The Act applies to an "agency." RCW 42.56.020(2). "Agency" includes all state agencies and all local agencies. 'Local agency' includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency." RCW 42.56.020(2). The City should coordinate responses to records requests across departmental lines. RCW 42.56.580 (Agency's public records officer must "oversee compliance with the Act.)

B. Court files and judges' files are not subject to the act. These rules do not address access to court records.

C. "Public record" defined. The City shall use the court's three-part test to determine if a record is a "public record." RCW 42.17.020(41). The document must be: A "writing," containing information "relating to the conduct of government" or the performance of any governmental or proprietary function, "prepared, owned, used or retained" by an agency.

D. "Writing" defined. A "public record" can be any writing "regardless of physical form or characteristics. A list of examples appears in RCW 42.17.020(41). An e-mail is a writing.

E. Relating to the conduct of government. To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41).

F. Prepared, owned, used or retained. A “public record” is a record “prepared, owned, used or retained” by an agency. A record can be “used” by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process it is a “public record.” Home computer documents of employees relating to agency business are “public records” unless they are exempt from disclosure. Employees should keep agency-related documents on home computers in separate folders and to routinely blind carbon copy (bcc) work e-mails back to the employee’s agency e-mail account.

2.52.030. Non-liability for disclosure. RCW 42.56.060 provides: “No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply” with the act.

2.52.040 Agency description--Contact information—Public records officer.

A. The City of Gig Harbor Civic Center is located at 3510 Grandview Street, Gig Harbor, WA 98335.

B. Any person wishing to request access to public records of the City, or seeking assistance in making such a request should contact the public records officer of the City:

The City Public Records Officer is the City Clerk
Of the City of Gig Harbor
3510 Grandview Street, Gig Harbor, WA 98335
(253) 851-8136
(253) 851-8267 fax

Information is also available at the City of Gig Harbor’s web site at www.cityofgigharbor.net.

C. The public records officer will oversee compliance with the act but another City staff member may process the request. Therefore, these rules will refer to the public records officer “or designee.”

D. The City is required by RCW 42.56.040 RCW 42.56.580 to publish its public record policies, organizational information and methods for requestors to obtain public records. These rules will be available in the Gig Harbor Municipal Code and on the City’s official website.

2.52.050. Availability of public records.

A. Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the City, e.g., Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays). Records must be inspected at the offices of the City.

B. Records index. The City finds that maintaining an index is unduly burdensome and would interfere with agency operations. The requirement would unduly burden or interfere with the City of Gig Harbor's operations in the following ways: the magnitude and diversity of four City departments with an even greater number of divisions/subdivisions, has resulted in the creation and use of as many different computer systems. The diversity in programs and information retaining systems would be extremely difficult, if not physically impossible, to compile into a single index. The performance of the City's overall mission does not allow for the addition to, or the revision or reassignment of duties for existing personnel so that a current index may be developed and maintained without additionally-required staff, and anticipated City revenue do not allow for additional staff members for the sole purpose of creating and maintaining such an all-inclusive index.

C. Organization of records. The City will maintain its records in a reasonably organized manner. The City will take reasonable actions to protect records from damage and disorganization. A requestor shall not take City records from City premises. A variety of records is available on the City web site at www.cityofgigharbor.net. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

D. Making a request for public records.

1. Any person wishing to inspect or copy public records of the City should make the request in writing on the City's request form, or by letter, delivery, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Mailing address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

2. If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or any required deposit and/or postage to mail such records. Pursuant to Resolution No. 498, standard photocopies will be provided at \$.15 cents per page.

3. A form is available for use by requestors at the office of the public records officer and on-line at www.cityofgigharbor.net. Oral requests are accepted, but are problematic because an oral request does not memorialize the exact records sought and therefore prevents a requestor or agency from later proving what was included in the request. In addition, a requestor must provide the agency with reasonable notice that the request is for the disclosure of public records and oral requests, especially to agency staff other than the public records officer or designee, may not provide the agency with the

required reasonable notice. Therefore, requestors are encouraged to provide written requests. If the City receives an oral request, the City staff person receiving it should immediately reduce it to writing and then verify in writing with the requestor that it correctly memorializes the request.

4. The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

5. The City may ask a requestor to prioritize the records he or she is requesting so that the City is able to provide the most important records first. The City is not required to ask for prioritization, and the requestor is not required to provide it.

6. The City cannot require the requestor to disclose the purpose of the request with two exceptions. RCW 42.56.080. First, if the request is for a list of individuals, the City will ask the requestor if he or she intends to use the records for a commercial purpose (a profit-expecting activity). The City's request for public records form includes a statement that the City is not authorized to provide public records consisting of a list of individuals for commercial use (a profit expecting activity), and there is a blank for the requestor's signature under penalty of perjury. This is to acknowledge that the requestor understands the prohibition on the use of such lists, but the requestor is not required to sign in order to obtain the records.

Second, the City may seek information sufficient to allow it to determine if another statute prohibits disclosure. For example, some statutes allow an agency to disclose a record only to a person having particular qualifications or for particular purposes. In such cases, the City is authorized to require that the requestor provide sufficient information in writing under penalty of perjury to allow the City to reasonably determine if the record is disclosable to the requestor.

2.52.060. Retention of records. The City is not required to retain every record it ever created or used. The state and local records committees approve a general retention schedule for state and local agency records that applies to records that are common to most agencies. Individual agencies seek approval from the state or local records committee for retention schedules that are specific to their agency, or that, because of particular needs of the agency, must be kept longer than provided in the general records retention schedule. The retention schedules for state and local agencies are available at www.secstate.wa.gov/archives/gs.aspx.

The City has a retention policy in which employees save retainable documents and delete nonretainable ones. The lawful destruction of public records is governed by retention schedules.

An agency is prohibited from destroying a public record, even if it is about to be lawfully destroyed under a retention schedule, if a public records request has been made

for that record. RCW 42.156.100. Additional retention requirements might apply if the records may be relevant to actual or anticipated litigation. The agency is required to retain the record until the record request has been resolved.

2.52.070. Processing of public records requests--general.

A. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

B. Within five business days of receipt of the request, the public records officer will do one or more of the following:

1. Make the records available for inspection or copying;
2. If copies are requested and payment of a deposit, for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
3. Provide a reasonable estimate of when records will be available;
4. If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
5. Deny the request. RCW 42.56.520.

C. Consequences of failure to respond. If the City does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

D. Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

E. Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the City believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the non-exempt portions, and indicate to

the requestor why portions of the record are being redacted, except to the extent otherwise provided by law.

F. Inspection of records.

1. Consistent with other demands, the City shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

2. The requestor must claim or review the assembled records within thirty days of the City's notification to him or her that the records are available for inspection or copying. The City will notify the requestor by telephone, e-mail or in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the City may close the request and re-file the assembled records. If payment for copies made to honor the requestor's request is not made within the thirty-day period, the City will not provide additional copies for other requests until payment has been received in full for all those previously copied, even if the copies have been destroyed after the request was closed for the requestor's failure to act. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

G. Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

H. Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

I. Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the City has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

J. Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the City has closed the request.

K. Later discovered documents. The City has no obligation to search for records responsive to a closed request. If the City discovers responsive records after a

request has been closed, the City should provide the later-discovered records to the requestor.

M. No duty to create records. The City is not obligated to create a new record in order to satisfy a record request.

N. Searching for records. The City must conduct an objectively reasonable search for responsive records. Such a search usually begins with the public records officers for the City deciding where the records are likely to be and who is likely to know where they are. The records officer should also e-mail staff members selected as most likely to have responsive records. Staff are required to promptly respond to inquiries regarding responsive records from the records officer.

2.52.080. Obligations of requestors.

A. Reasonable notice that request is for public records. A requestor must give an agency reasonable notice that the request is being made pursuant to the act. A requestor should not submit a "stealth" request, which is buried in another document in an attempt to trick the agency into not responding.

B. Identifiable record. A requestor must request an "identifiable record" or "class of records" before an agency must respond to it. An "identifiable record" is one that agency staff can reasonably locate. Public records requests are not interrogatories. An agency is not required to conduct legal research for a requestor. When an agency receives a request for records "relating to" or similar request, it should seek clarification of the request from the requestor.

C. "Overbroad" requests. An agency cannot deny a request for identifiable public records based solely on the basis that the request is overbroad. However, if such a request is not for identifiable records or otherwise is not proper, the request can still be denied. When confronted with a request that is unclear, an agency should seek clarification.

D. Documenting compliance. The City may number-stamp or number-label paper records provided to a requestor to document which records were provided. The City may also keep a copy of the numbered records so either the agency or requestor can later determine which records were or were not provided. If memorializing which specific documents were offered for inspection is impractical, the City may document which records were provided for inspection by making an index or list of the files or records made available for inspection.

2.52.090. Exemptions.

A. The Public Records Act provides has a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. The City must describe why each withheld record or redacted portion of a record is exempt from disclosure.

Requestors should be aware of exemptions, outside the Public Records Act, that restrict the availability of some documents held by the City of Gig Harbor for inspection and copying. The most current list of statutory exemptions and prohibitions from public disclosure adopted by the City is available at www.mrcs.org/publications/PRA06.pdf, and is hereby incorporated herein by reference. At the time this Ordinance was adopted, this list of statutory exemptions are as set forth in Exhibit A, attached hereto and incorporated herein by this reference. A copy of the most recent list of statutory exemptions will be provided by the City public records officer upon request.

2.52.100. Costs of providing copies of public records.

A. Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for \$.15 cents per page. The City may charge the higher amount set forth in a written statement setting forth the factors and manner in which the higher actual cost of copying has been determined, provided that the public records officer has available for inspection and copying that written statement.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The City will not charge sales tax when it makes copies of public records.

B. Costs for electronic records. The cost of electronic copies of records shall be \$1 for information on a floppy disk and \$1 for information on a CD-ROM, or the higher amount set forth in a written statement containing the factors and manner in which the higher actual cost of copying has been determined, provided that the public records officer has available for inspection and copying that written statement.

C. Costs of mailing. The City may also charge actual costs of mailing, including the cost of the shipping container.

D. Payment. Payment may be made by cash, check, debit, credit, or money order to the City.

E. Other statutes govern charges for particular kinds of records. As examples, RCW 46.52.085 (charges for traffic accident reports), RCW 10.97.100 (copies of criminal histories), RCW 3.62.060 and 3.62.065 (charges for certain records of municipal courts).

F. The City has the discretion to waive copying charges. For administrative convenience, many agencies waive copying charges for small requests.

G. The City may charge a deposit of up to ten percent of the estimated copying costs of an entire request before beginning to copy the records. The estimate must be reasonable. The City can require the payment of the deposit before copying an installment

of the records or the entire request. The deposit applies to the records selected for copying by the requestor, not all the records made available for inspection. Any unused deposit must be refunded to the requestor. When copying is completed, the City can require the payment of the remainder of the copying charges before providing the records.

H. If the City provides records in installments, the City may charge and collect all applicable copying fees (not just the ten percent deposit) for each installment. If the City provides records in installments, the City shall charge and collect all applicable copying fees (not just the ten percent deposit) for each installment, before providing the copies.

2.52.110. Review of denials of public records.

A. Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

B. Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to (public records officer's supervisor or other agency official designated by the agency to conduct the review). That person will immediately consider the petition and either affirm or reverse the denial within two business days following the City's receipt of the petition, or within such other time as the City agreed to by the City and the requestor.

C. Judicial review. Any person may obtain court review of denials of public records request pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ____ day of July 9, 2007.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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