



City Council Policy: CP035 - Open Records Act Policy and Procedures

Effective Date: June 17, 1991

Amends:

Approved By: City Council

I. SCOPE

II. PURPOSE

- A. The purpose for this policy and of the Kansas Open Records Act, as found in Chapter 171 of the 1983 Kansas Session Laws, is to insure that all **public records** are open for inspection by any person, except those **public records** specifically exempted from disclosure.
 - 1. The act is to be liberally construed and applied to promote the purpose.
- B. The procedures contained herein are to be followed in requesting access to and obtaining copies of **public records**. These procedures are designed to provide access to **public records**, protect **public records** from damage and disorganization, prevent excessive disruption of the **City's** essential functions, provide assistance and information upon request, and insure efficient and timely action in response to applications for inspection of **public records**.

III. RESPONSIBILITY

- A. All Departments

IV. DEFINITIONS

- A. "**Public record**" means any recorded information, regardless of form or characteristics, which is made, maintained, and kept by or is in the possession of **the City**. "**Public record**" does not include records which are owned by a private person or entity and are not related to functions, activities, programs, or operations funded by public funds or records which are made, maintained or kept by an individual who is the Mayor or a member of the City Council.
- B. "**The City**" includes **the City** of Prairie Village and any office, officers, agency, or instrumentality thereof. It does not include any officer or employee if **the City** does not provide him or her with an office which is open to the public at least thirty-five (35) hours a week, nor does it include any municipal judge.
- C. "**Official custodian**" means the officer or employee who is responsible for the maintenance of the **public records**, regardless of whether such records are in the officer's or employee's actual personal custody and control. Appointment of official record custodians is referenced in PVMC 1.50.050
- D. "**Custodian**" means the **official custodian** or any person designated by an **official custodian** to carry out the duties of **custodian** under this act.
- E. "**Business day**" means any day other than a Saturday, Sunday, or day designated as a holiday by the Congress of the United States, by the legislature or governor of this state or by **the City**.
- F. "**Criminal investigation records**" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 22-3405 and amendments thereto.
- G. "**Undercover Agent**" means an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violation of criminal law in a capacity where such employee's identity or employment by the public agency is secret.

V. POLICY

- A. **FEES** - All fees and charges for inspection and/or copying open **public records** shall be established by the Governing Body and published in the City Fee Schedule, which may be amended from time to time.
 - 1. Inspection Fee
 - a.) When a request has been made for inspection of any **public record** which is readily available to the custodian, the record custodian may waive the inspection fee.
 - b.) In all other cases, a record inspection fee may be changed at the rate established by the Governing Body when required by the Record Custodian.

CP035 - Open Records Act Policy and Procedures

- c.) If a records custodian is required to inspect the records to ensure **the City** abides by the Kansas Open Records Act, a charge based on the hourly employee salary rate of the custodian will also be assessed to the requestor.
2. Copying Fee
 - a.) A fee may be charged for photocopying **public records**, such fee as necessary to cover the cost of labor, materials, and equipment.
 - b.) **The City** will charge the individual employee hourly rate for the copying of requests for more than ten pages.
 - c.) For copying any **public records** which cannot be reproduced by **the City's** photocopying equipment, the requester shall be charged the actual cost to **the City**, including staff time, in reproducing such records.
 - d.) Mailing and handling costs may be assessed by the Record Custodian to cover actual costs incurred by **the City** in responding to a request for copies of an open **public record**.
 - e.) The copying fee may be waived when multiple copies of the records requested have been prepared for free public distribution, or when the record custodian determines that the cost of charging and handling the fee exceeds the cost of providing a copy without charge.
3. Prepayment of Fees
 - a.) A custodian may demand prepayment of the fees herein whenever he or she believes this to be in the best interest of **the City**. The prepayment amount shall be \$10.00. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery or the requested copies.
 - b.) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the record custodian, such fees are estimated to exceed \$10.00.
 - c.) Where prepayment has been demanded by the custodian, no record search or record duplication shall be made until such prepayment has been received.
4. Payment
 - a.) All fees charged shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the City. All fees received shall be paid to the City Treasurer whenever the amount of fees collected totals \$10.00, but not less than monthly.
- B. PUBLIC RECORDS NOT SUBJECT TO DISCLOSURE** - The following categories of **public records** are not required to be disclosed:
 1. Records which are specifically prohibited from being disclosed or whose disclosure is restricted by federal or state law or rule of the Kansas Supreme Court. Section 7(a)(1).
 2. Records which are privileged under the rules of evidence. Section 7(a)(2).
 3. Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients. Section 7(a)(3).
 4. Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries, and lengths of service of officers and employees once they are employed as such. Section 7(a)(4).
 5. Letters of reference or recommendation pertaining to the character of qualifications of an identifiable individual. Section 7(a)(6).
 6. Information which would reveal the identity of an individual who lawfully makes a donation to the City, if anonymity of the donor is a condition of the donation. Section 7(a)(7),(8).
 7. Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores. Section 7(a)(9).
 8. Records involving administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or **undercover agent**. Section 7(a)(11).
 9. Records of emergency or security information or procedures of **the City**, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of **the City**, building, or facility. Section 7(a)(12).
 10. The contents of appraisals or engineering or feasibility estimates or evaluations made by or for **the City** relative to the acquisition of property, prior to the award of formal contracts therefore. Section 7(a)(13).
 11. Correspondence between **the City** and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory, or enforcement

CP035 - Open Records Act Policy and Procedures

responsibility of **the City** or which is widely distributed to the public by **the City** and is not specifically in response to communications from such a private individual. Section 7(a)(14).

12. Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful execute session under K.S.A. 75-4319 and amendments thereto. Section 7(a)(15).
13. Software programs for electronic data processing and documentation thereof, but **the City** shall maintain a register, open to the public, that describes:
 - a.) The information which **the City** maintains on computer programs. Section 7(a)(16).
 - b.) The form in which the information can be made available using existing computer programs. Section 7(a)(16).
14. Plans, designs, drawing, or specifications which are prepared by a person other than an employee of **the City** or records which are the property of private person. Section 7(a)(18).
15. Notes, preliminary drafts, drawings, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations, or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting. Section 7(a)(20).
16. Records of the City Council, which records pertain to proposed legislation, or which records pertain to research prepared for one or more members of the Council, except that this exemption shall not apply when such records are:
 - a.) Public cited or identified in an open meeting or in an agenda of an open meeting; or
 - b.) Distributed to a majority of a quorum of any body which has authority to take action or make recommendations to **the City** with regard to the matters to which such records pertain. Section 7(a)(21), (22).
17. Library patron and circulation records which pertain to identifiable individuals. Section 7(a)(23).
18. Records which are compiled for census or research purposes and which pertain to identifiable individuals. Section 7(a)(24).
19. Records which represent and constitute the work product of an attorney. Section 7(a)(25).
20. Specifications for competitive bidding, until the specifications are officially approved by **the City**. Section 7(a)(27).
21. Sealed bids and related documents, until a bid is accepted or all bids rejected. Section 7(a)(28).
22. **Public records** containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. Section 7(a)(30).
23. The bidder's list of contractors who have requested bid proposals for construction projects from **the City**, until a bid is accepted or all bids rejected. Section 7(a)(32).
24. Engineering and architectural estimates made by or for **the City** relative to public improvements. Section 7(a)(33).
25. Financial information submitted by contractors in qualification statements to **the City**. Section 7(a)(34).
26. Information which would reveal the identity of any **undercover agent** or any informant reporting a specific violation of law. Section 7(a)(5).
 - a.) **Criminal investigation records**, except that the district court, in an action brought pursuant to section 8 of the Open Records Act, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:
 - is in the public interest;
 - would not interfere with any prospective law enforcement action;
 - would not reveal the identity of any confidential source or **undercover agent**;
 - would not reveal confidential investigative techniques or procedures not known to the general public; and
 - would not endanger the life of physical safety of any person. Section 7(a)(10).
 - Would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.
 - b.) Correctional records pertaining to an identifiable inmate, except that:
 - The name, sentence data, parole eligibility date, disciplinary record, custody level, and location of an inmate shall be subject to disclosure to any person other than another inmate; and
 - The ombudsman of corrections, the corrections ombudsman board, the attorney general, law enforcement agencies, council for the inmate to whom the record pertains, and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law. Section 7 (a)(29).
 - c.) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act. Section 7 (a)(26).

CP035 - Open Records Act Policy and Procedures

d.) **Public records** pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law. Section 7 (a)(31).

- Notwithstanding the foregoing provision, any **public record** which has been in existence more than 70 years shall be open for inspections by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute, or rule of the Kansas Supreme Court.
- These provisions shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person. There is, however, no requirement to compile statistical information.

C. GENERAL GUIDELINES

1. The Open Records Act does not require **the City** to retain any **public record** nor does it authorize the destruction of any **public record**.
2. The City is not required, in response to requests for information, to compile information or statistics from raw data nor answer questions about the content of **public records**.

VI. PROCEDURES

A. PROVIDING ACCESS TO THE REQUESTED PUBLIC RECORDS:

1. Information to be Provided - **The City** shall provide, upon request of any person, the following information:
 - a.) The principal offices of **the City**, the regular office hours, and any additional hours established for inspecting and copying **public records**.
 - b.) The title and address of the **official custodians** of **the City's** records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.
 - c.) The fees, if any, charged for access to or copies of **the City's** records.
 - d.) The procedures to be followed in requesting access to and obtaining copies of **the City's** records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by **the City**, for business days when it does not maintain regular office hours.
2. Hours - **Public records** may be inspected during the regular office hours of **the City**.
3. Removing Original Copies - No person may remove original copies of **public records** from any office of **the City** without the written permission of the custodian of the record. The form for permission is Form A-7.
4. Excising Materials - When a requested **public record** contains material which is not subject to disclosure, the custodian will excise or delete that material and make available to the requester only that material which is subject to disclosure. If a **public record** is not subject to disclosure because it pertains to an identifiable individual, **the City** shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure. However, if the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, **the City** will not disclose those portions of the record which pertain to such individual or individuals without first obtaining a legal opinion from the City Attorney.
5. Persons receiving access to open **public records** may be required to complete a "Certification of Requester" Form A-6. This will certify that the information obtained from open **public records** will not be used for commercial purposes.

B. PROVIDING COPIES OF PUBLIC RECORDS

1. Right to make copies - Any person may take abstracts or obtain copies of any **public record** to which such person has access under the Open Records Act.
 - a.) **The City** is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or displayed to a public meeting of the City Council, but **the City** is not required to provide such items or devices which are copyrighted by a person other than **the City**. Section 5(a). The form for providing access but denying copies is form. A-5.
 - b.) The custodian may require a written request for copies and advance payment of the prescribed fees.
2. Control by Custodian - Copies of **public records** must be made while the records are in possession, custody and control of the custodian or another employee designated by the custodian and shall be made under the supervision of such custodian or employee.
3. Making Copies - When practical, copies shall be made in the place where the records are kept. If it is impractical to do so, the custodian may allow arrangements to be made for the use of other facilities. If it is necessary to use other facilities for copying, the cost thereof must be paid by the person desiring a

CP035 - Open Records Act Policy and Procedures

copy of the records. In addition, **the City** will charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection FEES (b) and may establish a reasonable schedule of times for making copies at other facilities.