

TITLE III: ADMINISTRATION

Chapter

33. PUBLIC RECORDS



## CHAPTER 33: PUBLIC RECORDS

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### § 33.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AUTHORITY.** Any of the following city entities having custody of a city record: an office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.

**CUSTODIAN.** That officer, department head, division head or employee of the city designated under the definition of "record" below or otherwise responsible by law to keep and preserve any city records or file, deposit or keep the records in his or her office, or is lawfully in possession or entitled to possession of such public records and who is required by this section to respond to requests for access to the records.

**RECORD.** Any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. **RECORD** includes but is not limited to handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes) and computer printouts. **RECORD** does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or

bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(1989 Code, § 1.07) (Ord. 400, passed - -)

### **§ 33.02 DUTY TO MAINTAIN RECORDS.**

(A) Except as provided under § 33.07, each officer and employee of the city shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of the officer or employee, or his or her deputies, or to the possession or control of which he or she or they may be lawfully entitled as such officers or employees.

(B) Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his or her successor all records then in his or her custody and the successor shall receipt therefor to the officer or employee, who shall file such receipt with the City Clerk-Treasurer. If a vacancy occurs before a successor is selected or qualifies, the records shall be delivered to and receipted for by the Clerk-Treasurer, on behalf of the successor, to be delivered to the successor upon the latter's receipt.

(1989 Code, § 1.07) (Ord. 400, passed - -)

### **§ 33.03 LEGAL CUSTODIAN.**

(A) The City Clerk-Treasurer, or in his or her absence or disability, or in case of vacancy, the Deputy Clerk, is hereby designated the legal custodian of all city records.

(B) Unless otherwise prohibited by law, the City Clerk-Treasurer, or his or her designee, shall act as legal custodian for the Common Council and for any committees, commissions, boards or other authorities created by ordinance or resolution of the Common Council.

(C) For every authority not specified in divisions (A) or (B) of this section, the authority's chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his or her staff to act as the legal custodian.

(D) Each legal custodian shall name a person to act as legal custodian in his or her absence or the absence of his or her designee.

(E) The legal custodian shall have full legal power to render decisions and to carry out the duties of an authority under Wis. Stats. Ch. 19, subch. II, and this section. The designation of a legal custodian does not affect the powers and duties of any authority under this section.

(1989 Code, § 1.07) (Ord. 400, passed - -)

**§ 33.04 PUBLIC ACCESS TO RECORDS.**

(A) Except as provided in § 33.06, any person has a right to inspect a record and to make or receive a copy of any record as provided in Wis. Stats. § 19.35(1).

(B) Records will be available for inspection and copying during all regular office hours.

(C) If regular office hours are not maintained at the location where records are kept, the records will be available for inspection and copying upon at least 48 hours' advance notice of intent to inspect or copy.

(D) A requester shall be permitted to use facilities comparable to those available to city employees to inspect, copy or abstract a record.

(E) The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(F) A requester shall be charged a fee to defray the cost of locating and copying records as follows:

(1) The cost of photocopying shall be \$1 per page. Such cost has been calculated not to exceed the actual, necessary and direct cost of reproduction.

(2) If the form of a written record does not permit copying, the actual and necessary cost of photographing and photographic processing shall be charged.

(3) The actual full cost of providing a copy of other records not in printed form on paper, such as films, computer printouts and audiotapes or videotapes, shall be charged.

(4) If mailing or shipping is necessary, the actual cost thereof shall also be charged.

(5) There shall be no charge for locating a record unless the actual cost therefor exceeds \$50, in which case the actual cost shall be determined by the legal custodian and billed to the requester.

(6) The legal custodian shall estimate the cost of all applicable fees and may require a cash deposit adequate to assure payment, if such estimate exceeds \$5.

(7) Elected and appointed officials of the city shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.

(8) The legal custodian may provide copies of a record without charge or at a reduced charge where he or she determines that waiver or reduction of the fee is in the public interest.

(G) Pursuant to Wis. Stats. § 19.34, and the guidelines therein listed, each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which,

the legal custodian from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records or obtain copies of records and the costs thereof. Each authority shall also prominently display at its offices, for the guidance of the public, a copy of Wis. Stats. §§ 19.31 to 19.39. This division does not apply to members of the Common Council. (1989 Code, § 1.07) (Ord. 400, passed - -)

### **§ 33.05 ACCESS PROCEDURES.**

(A) A request to inspect or copy a record shall be made to the legal custodian. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Wis. Stats. § 19.37. Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail, unless prepayment of a fee is required under § 33.04(F)(6). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(B) Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor. If the legal custodian, after conferring with the City Attorney, determines that a written request is so general as to be unduly time-consuming, the party making the request may first be required to itemize his or her request in a manner which would permit reasonable compliance.

(C) A request for a record may be denied as provided in § 33.06. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request.

(D) Every written denial of a request shall inform the requester that, if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Wis. Stats. § 19.37, or upon application to the Attorney General or a district attorney. (1989 Code, § 1.07) (Ord. 400, passed - -)

### **§ 33.06 LIMITATIONS ON RIGHT TO ACCESS.**

(A) As provided by Wis. Stats. § 19.36, the following records are exempt from inspection under this section:

(1) Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law;

(2) Any record relating to investigative information obtained for law enforcement purposes, if federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state;

(3) Computer programs, although the material used as input for a computer program or the material produced as a product of the computer program is subject to inspection; and

(4) A record or any portion of a record containing information qualifying as a common law trade secret.

(B) As provided by Wis. Stats. § 43.30, public library circulation records are exempt from inspection under this section.

(C) In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the City Attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include but are not limited to the following:

(1) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them;

(2) Records of current deliberations after a quasi-judicial hearing;

(3) Records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance or discipline of any city officer or employee, or the investigation of charges against a city officer or employee, unless the officer or employee consents to such disclosure;

(4) Records concerning current strategy for crime detection or prevention;

(5) Records of current deliberations or negotiations on the purchase of city property, investing of city funds, or other city business whenever competitive or bargaining reasons require nondisclosure;

(6) Financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in the history or data; and

(7) Communications between legal counsel for the city and any officer, agent or employee of the city, when advice is being rendered concerning strategy with respect to current litigation in which the city or any of its officers, agents or employees is or is likely to become involved, or communications which are privileged under Wis. Stats. § 905.03.

(D) If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with

the City Attorney prior to releasing any such record and shall follow the guidance of the City Attorney prior to releasing the record and shall follow the guidance of the City Attorney when separating out the exempt material. If, in the judgment of the custodian and the City Attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

(1989 Code, § 1.07) (Ord. 400, passed - -)

### **§ 33.07 DESTRUCTION OF RECORDS.**

(A) City officers may destroy the following nonutility financial records of which they are the legal custodians and which are considered obsolete, after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Wis. Stats. Ch. 442, but not less than 7 years after payment or receipt of any sum involved in the particular transaction, unless a shorter period has been fixed by the State Public Records Board pursuant to Wis. Stats. § 16.61(3)(e), and then after such shorter period:

- (1) Bank statements;
- (2) Cancelled checks;
- (3) Receipt forms; and
- (4) Vouchers and the like.

(B) City officers may destroy the following utility records of which they are the legal custodians and which are considered obsolete after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Wis. Stats. Ch. 442, subject to State Public Service Commission regulations, but not less than 7 years after the record was effective, unless a shorter period has been fixed by the State Public Records Board pursuant to Wis. Stats. § 16.61(3)(e), and then after such a shorter period, except that water stubs, receipts of current billings and customers' ledgers may be destroyed after 2 years:

- (1) Contracts;
- (2) Excavation permits; and
- (3) Inspection records.

(C) City officers may destroy the following records of which they are the legal custodian and which are considered obsolete, but not less than 7 years after the record was effective unless another period has been set by statute, and then after such a period, or unless a shorter period has been fixed by the State Public Records Board pursuant to Wis. Stats. § 16.61(3)(e), and then after such a shorter period:

- (1) Old insurance policies;



- (2) Election notices; and
- (3) Canceled registration cards.

(D) Unless notice is waived by the State Historical Society, at least 60-days' notice shall be given the State Historical Society prior to the destruction of any record as provided by Wis. Stats. § 19.21(4)(a).

(E) Any tape recordings of a governmental meeting of the city may be destroyed, erased or reused no sooner than 90 days after the minutes of the meeting have been approved and published, if the purpose of the recording was to make minutes of the meeting.  
(1989 Code, § 1.07) (Ord. 400, passed - -)

### § 33.08 PRESERVATION THROUGH MICROFILM.

Any city officer or the director of any department or division of city government may, subject to the approval of the Common Council, keep and preserve public records in his or her possession by means of microfilm or other photographic reproduction method. Such records shall meet the standards for photographic reproduction set forth in Wis. Stats. § 16.61(7)(a) and (b), and shall be considered original records for all purposes. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of state law and §§ 33.04 through 33.06.  
(1989 Code, § 1.07) (Ord. 400, passed - -)

