

RESOLUTION NO. 21-2017

CITY OF LEAVENWORTH, WASHINGTON

**A RESOLUTION OF THE CITY OF LEAVENWORTH, WASHINGTON, ADOPTING A
REQUESTS FOR PUBLIC RECORDS POLICY**

BE IT RESOLVED by the City Council of the City of Leavenworth, Washington as follows:

WHEREAS, the City is required by RCW 42.56.100 to adopt and enforce reasonable rules and regulations, consistent with the intent of the Public Records Act, Chapter 42.56 RCW, to provide access to public records, to protect public records from damage or disorganization, and to prevent excessive inference with other essential functions of the City, and

WHEREAS, the City finds that it would be unduly burdensome to calculate actual costs for copies; therefore, the City adheres to rules pertaining to the Public Records Act RCW 42.56.120(2)(b), (c) and (e) for charging fees; and

WHEREAS, these rules and regulations adopted by the City are intended to provide for timely action and for the fullest possible assistance on requests for public records, and

WHEREAS, this policy is intended to protect the integrity of the City's records and is sensitive to responding to proper requests without adversely interfering with other essential function of the City.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF
LEAVENWORTH, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

The Requests for Public Records Policy of the City of Leavenworth attached hereto and incorporated herein is hereby adopted and approved by the City of Leavenworth.

Passed by the City Council of the City of Leavenworth and approved by the Mayor this 12th day of December, 2017.

CITY OF LEAVENWORTH

By:


Cheryl K. Farivar, Mayor

Attest:


Chantell Steiner
Finance Director/City Clerk

REQUESTS FOR
PUBLIC RECORDS
POLICY



City of Leavenworth

700 Highway 2 / Post Office Box 287
Leavenworth, Washington 98826
(509) 548-5275 / Fax: (509) 548-6429

Revised December 12, 2017

City of Leavenworth
700 Highway 2 / Post Office Box 287
Leavenworth, Washington 98826
(509) 548-5275 / Fax: (509) 548-6429

CITY OF LEAVENWORTH PUBLIC RECORDS POLICY

Policy Intent and General Information:

The City is required by RCW 42.56.100 to adopt and enforce reasonable rules and regulations, consistent with the intent of the Public Records Act, chapter 42.56 RCW (the "Act"), to provide access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the City.

Within the spirit of the Act, these rules and regulations adopted by the City are intended to provide for timely action and for the fullest possible assistance on requests for public records. This policy is also intended to protect the integrity of the City's records and is sensitive to responding to proper requests without adversely interfering with other essential functions of the City.

Upon request, the City will make available any public record for inspection by the public and/or copying by the staff for the public unless the record is exempt from disclosure under chapter 42.56 RCW, chapter 10.97 RCW, chapter 13.50 RCW or other applicable statutes.

If a public record request is made when such record exists but is scheduled for destruction in the near future, the City will make every effort to retain possession of the record, and will not intentionally destroy or erase the record until the public records request is resolved.

It is not necessary that every requestor complete a form to obtain public records. Those records which clearly can be disclosed and are readily available without disrupting normal business operations may be provided to the requestor without the use of a form. The City will document the verbal request to the extent possible and practicable. When the requestor is seeking records, which are not readily accessible, or are questionable for disclosure, the form "Public Records Request" (**Exhibit A**) shall be completed by the person making the request.

Person Responsible to Implement Policy - Public Records Officer:

The Finance Director/City Clerk serves as the City's Public Records Officer. The Public Records Officer is responsible for ensuring that City records are protected and is ultimately responsible for the implementation of this Public Records Policy. When there is a disclosure question or an accessibility concern by the staff or a requestor, the Public Records Officer will investigate and resolve the issue or matter at hand. In the event issues are not covered by this policy, the Public Records Officer may, in his or her discretion, follow the Public Records Act Model Rules located at chapter 44-14 of the Washington Administrative Code.

Prompt Response Goal/Installments:

Within five business days of receiving a public records request, the City will either (1) provide the record; (2) provide an internet address and link on the city's website to the specific records requested, except that if the requestor notifies the city that he or she cannot access the records through the internet, then the city will provide access to copies or allow the requestor to view the

records using a city computer; (3) acknowledge the receipt of the request and provide a reasonable estimate of the time that is required to respond to the request; (4) deny the request, in whole or in part, and provide specific statutory authority for the denial; or (5) request clarification if the request is unclear. Additional time may be required to respond based upon the need to clarify the intent of the request, to locate and assemble the records requested, to notify third persons or agencies affected by the request, or to determine whether any of the records requested are exempt from public disclosure. Public records may be provided on a partial or installment basis as records that are part of a larger set of requested records are assembled and made ready for disclosure.

Request for Proprietary Information:

Certain information which the City receives as part of a permit process from wireless communication providers is proprietary in nature, such as service area maps and plans. When the City receives requests for these types of records, the City will notify the wireless communication (WCF) provider that a request for potentially proprietary information has been received and provide the WCF with an opportunity to bring an action to prevent the disclosure. If the WCF provider does not bring an action to prevent disclosure within one week, the City will disclose the records.

Disclaimer of Public Liability:

Under RCW 42.56.060, the City, its public officials, public employees, and/or custodian will be shielded from liability for any loss or damage based upon the release of a public record. This liability shield applies when the City, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of the Public Records Act.

Public Record Index:

The City is responsible for keeping an index of the City's files and recordings for public review to assist in identifying a specific record request. The City finds it unduly burdensome to maintain a complete index of all files and recordings but will strive to keep records in an orderly fashion that is updated regularly for availability upon request.

Identifiable Public Records Requests:

RCW 42.56.080 provides that "Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person. . . ." The use of the word "identifiable" in the statute means that the City is only required to disclose reasonably described records already in existence, since those are the only records that can be identified. The City is not required to generate records or analyze data in response to a request for information.

City Response to Exempt or Partially Exempt Requests:

If part of a requested public record is withheld because certain portions are exempt from disclosure, the form "Special Response to Request for Access (Portions Withheld)" (**Exhibit B**) shall be completed. If all of a requested record is exempt from disclosure, the form "Denial of Request for Access" (**Exhibit C**) shall be completed and provided to the requestor.

Request Hours & General Copying Information:

Records will be available for inspection and copying during the customary office hours of City Hall, which are from 9:00 A.M. to 5:00 P.M., Monday through Friday, except legal holidays. Copies are available at a cost as set forth on the attached fee schedule. The City may, at its discretion, require the requestor to deposit a sum in an amount not to exceed 10 percent of the estimated cost of providing copies for a request. If the records are made available on a partial or installment basis, the City may charge for each part of the request as it is provided. If an

installment of a records request is not paid for or reviewed within 30 days after the City provides notice of availability of the installment, the City is not obligated to fulfill the balance of the request. In addition, because the City is prohibited from lending its credit, a requestor must prepay the estimated copy cost for any copies that must be made by an outside vendor. As copying facilities and the City's files are located in an "Employee Only" area of City Hall, for security purposes and to avoid unreasonable disruption of operations, the City cannot offer these facilities for public use.

Minutes, Ordinances, Agendas, Resolutions:

Readily accessible copies of records that include approved minutes, agendas, ordinances and resolutions can be reviewed at City Hall without charge. Draft minutes can be made available for review or copying once they have been transcribed and reviewed by the Finance Director/City Clerk, and with the understanding that they have not been officially approved.

The City Council or other Commission or Board agenda sheets shall be available upon request and without charge, usually on the Friday preceding their meeting. Requests for multiple copies or requests for historical information will be processed at the cost as set forth on the attached schedule and within the constraints of the normal records request procedure. Many of these records may also be found on the City's website.

Meeting Information:

Informational items for meetings of the City Council or for other Commissions or Boards will be available in City Hall for audience use, usually by the Friday before the meeting. A request for multiple copies of this information will be processed at the cost as set forth on the attached schedule and within the constraints of the normal request for records procedure. Meeting information may also be found on the City's website.

Audio Recordings:

Digital Recording, Tapes or CD's of meetings will be available for listening at City Hall without charge. Requests to listen to digital recording, audio tapes or CD's shall be made one day in advance to allow for the time necessary to make them available. Multiple requests may take more than one day before they are made available. Requests for duplicates of audiotapes or CD's will take a minimum of one day to complete. The fee will be based on the actual cost to the City for each digital recording, tape or CD requested. Due to consistency problems with equipment, the City will supply the USB drive, tape or CD as part of the above fee. If a digital recording is able to be emailed, there will be no charge.

Statement of Restrictions on Real Property

State law requires the City to provide property owners (or persons with a contract to purchase property) certain zoning information upon request. When such a request is made, the form shown on Exhibit E should be completed. It is important to verify the following: (1) that the requestor is either the owner of the property or is a purchaser of the property under a recorded real estate contract, (2) that the property is within the City, and (3) that the property either contains a single family residence or is less than five acres in size. Unless these three requirements are met, the City is not required to provide a statement of restrictions. Upon receiving a valid request for a statement of restrictions, the City must respond by providing the statement of restrictions within 30 days.

The statement of restrictions must include: (1) the zoning currently applicable to the property; (2) any pending zoning changes currently advertised for public hearing that would be applicable to the real property; and (3) any designations made by the City pursuant to the Growth

Management Act or any portion of the real property as agricultural land, forest land, mineral resource land, wetland, an area with a critical recharging effect on aquifers used for potable water, a fish and wildlife habitat conservation area, a frequently flooded area, and as a geological hazardous area.

Other Records, Information, Services or Published Documents:

Copies of published documents, such as the budget, maps, environmental impact statements, programs, plans, etc. will be generally available at City Hall, per the attached fee schedule. Many of these records may also be found on the City's website.

Protection of Original Records:

In order to protect the integrity of public records from loss, damage, or disorganization, the City will allow original records to be reviewed under the following guidelines:

1. No original records may be removed from City Hall unless court ordered.
2. Original files or books will only be released one at a time for review.
3. To protect from accidental erasures or problems with equipment compatibility and accessibility, a certified copy of the original requested recording(s) will be available for listening at City Hall. Requests to listen to recording(s) shall be made one day in advance to allow for the time necessary to make the recording(s) available. Multiple requests may take more than one day before they are made available.

Explanation of City Forms

Exhibit A:

The form "Request For/Access to Public Records" is used when a request is received for records, which cannot be immediately addressed and will need more time to research or provide. Also, it is used when there is concern that portions of the requested records may be exempt from disclosure. This process allows the City time to search for the record, without adversely affecting normal operations, or when appropriate, time to determine if any portion of the request is exempt.

Exhibit B:

The form "Special Response to Request for Access (Portions Withheld)" is used when a portion of a record(s) is withheld, stating the basis for the withholding.

Exhibit C:

The form "Denial of Request for Access" is used when a complete record is denied based upon a statutory exemption. The form is completed citing the section of the statute for the complete exemption of the record.

Exhibit D:

This form is used to notify an employee that a request for records relating to the employee has been received and asks the employee to notify the City if he/she disputes that the records requested should be disclosed under the Public Records Act.

Exhibit E:

This form "Statement of Restrictions for Real Property" is used to request certain zoning information for property within the City boundaries. State law requires the City to provide property owners (or persons with a contract to purchase property) certain zoning information upon request.

Exhibit F:

This form is used to notify a WCF provider that a request for potentially proprietary information regarding the provider's company has been received and asks the WCF provider to notify the City if he/she disputes that the records requested should be disclosed under the Public Records Act.

List of Exemptions

Pursuant to RCW 42.56.070, the City of Leavenworth is required to publish and maintain a current list containing every law that the City believes exempts or prohibits disclosure of specific records of the City. The City adopts by reference the exemptions from public disclosure contained in chapter 42.56 RCW, including any future amendments thereto or recodification thereof, along with any other exemption or exception to the Public Records Act provided by law, including but not limited to those exemptions set forth in Appendix C to "Public Records Act for Washington Cities and Counties," Municipal Research and Services Center, Report No. 61, May 2007, as may be amended from time to time, a copy of which shall be maintained in the office of the Finance Director/City Clerk.

Public Records Requests - Fees

<i>Public Records</i>	<i>Cost</i>
Audio Duplications	City Actual Cost
Computer printout, per page cost	Each page \$.15
Copies, standard or legal	Each page \$.15
<u>City of Leavenworth Maps:</u> (1) Address Maps or Plan Sets	(1) Actual City Cost
<u>Fax Services</u>	
First page	\$2.00
Additional page	\$.50 / each
Incident reports	Each page \$.15
Notary Services	\$10.00
NSF / EFT Fee	\$45.00
Ordinances, Resolutions or Findings	First copy free; all others \$.15 per page
<p>NOTE: Any other item not specifically enumerated on this list will be charged at a rate that will reimburse the City's total cost of duplicating that item. The City reserves the right to outsource copying of materials and transcription of tapes. If materials are outsourced, the actual cost for copying and transcription billed to the City shall be the cost reimbursed to the City by the requestor. Based on small requests, the City reserves the right to waive the per page fees.</p>	

EXHIBIT B

City of Leavenworth
700 Highway 2 / Post Office Box 287
Leavenworth, Washington 98826
(509) 548-5275 / Fax: (509) 548-6429

SPECIAL RESPONSE TO REQUEST FOR ACCESS
(PORTIONS WITHHELD)

The City of Leavenworth received a request for access to a public record from:

Name: _____ Date: _____

Address: _____

_____ Telephone: _____

In response to this request, the City is making available the following public records:

Certain portions have been withheld pursuant to (insert legal authority):

Give brief explanation of how exemption applies to the record withheld:

Number of Pages withheld: _____

I have been provided access to the above-described public record(s).

Date

Signature

EXHIBIT C

City of Leavenworth
700 Highway 2 / Post Office Box 287
Leavenworth, Washington 98826
(509) 548-5275 / Fax: (509) 548-6429

DENIAL OF REQUEST FOR ACCESS

On _____, the City of Leavenworth received a request from:

for access to a public record(s). In response to this request, the City is withholding the following records:

These records are being withheld pursuant to:

Briefly, this exemption applies to the record withheld because:

Number of pages withheld: _____

These exemptions authorize the withholding of the public record(s) being requested. The public record(s) to which access was requested is exempt from disclosure requirements by State law. Therefore, the request for access to the above-described record(s) is denied.

CITY CERTIFICATION

I certify under penalty of perjury that on _____ I hand-delivered/mailed to _____ at _____ the Denial of Request for Access document on which this certification appears.

Date Signed

Agent for the City of Leavenworth

EXHIBIT D

Dear Employee:

We have received a public records request from _____ for the following records:

_____.

As a courtesy to current and previous employees, the City may provide those persons affected by a request for records the opportunity to exercise their rights under the law. The City is under no statutory obligation to notify an employee that a request has been made. However, the City is legally obligated to disclose these records promptly unless they are exempt or you have filed a lawsuit against the City to prevent release of the record(s) as authorized under RCW 42.56.540.

Our initial review of your file indicates that the following records must be disclosed:

_____.

If you dispute that the records are subject to disclosure under the Public Records Act, I would be happy to discuss it with you. As I mentioned earlier, the City is required to disclose these records promptly. Unless we hear otherwise from you by _____, at _____ AM/PM, we will be disclosing the records.

Please feel free to give me a call with any questions.

Sincerely,

City Administrator

EXHIBIT E

City of Leavenworth

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Leavenworth, Washington 98826
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REQUEST FORM -- STATEMENT OF RESTRICTIONS FOR REAL PROPERTY

NOTE: The City is not required to provide a Statement of Restrictions unless the applicant is an owner or buyer under a recorded real estate contract in which the seller is the owner, and the property contains a single family residence or is greater than 5 acres in size. See RCW 35A.21.280.

OWNER'S NAME: _____
(First) (Middle) (Last)

APPLICANT'S NAME: _____
(First) (Middle) (Last)

RELATIONSHIP TO OWNER: _____

MAILING ADDRESS: _____

PROPERTY ADDRESS: _____

PROPERTY TAX PARCEL NO.: _____

PLEASE CHECK APPLICABLE BOX:

- The Property: contains a single family residence
 is less than five acres in size
 neither of the above

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I AM EITHER THE VESTED OWNER OF RECORD OF THE PROPERTY REFERENCED HEREIN OR A PERSON HOLDING THE BUYER'S INTEREST UNDER A RECORDED REAL ESTATE CONTRACT IN WHICH THE SELLER IS THE VESTED OWNER AND THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT.

Dated: _____ Signature: _____

FOR INTERNAL USE ONLY

Date Request Received: _____
Date Response Provided: _____

ACTION TAKEN:

- Statement of Restrictions Sent
 Application Denied

EXHIBIT F

Dear WCF Provider:

We have received a public records request from _____
_____ for the following records:

As a courtesy to our WCF providers, the City may provide those persons affected by a request for potentially proprietary information the opportunity to exercise their rights under the law. The City is under no statutory obligation to notify a WCF provider that a request has been made. However, the City is legally obligated to disclose these records promptly unless it is exempt or you have filed a lawsuit against the City to prevent release the record(s) as authorized under RCW 42.56.540.

Our initial review of your file indicates that the following records must be disclosed:

If you contend that the records are subject to disclosure under the Public Records Act, I would be happy to discuss it with you. As I mentioned earlier, the City is required to disclose these records promptly. Unless we hear otherwise from you by _____, at _____ AM/PM, we will be disclosing the records.

Please feel free to give me a call with any questions.

Sincerely,

City Administrator

SUMMARY: COSTS FOR COPIES UNDER PUBLIC RECORDS ACT – RCW 42.56

AGENCY OPTIONS PURSUANT TO EHB 1595 (CHAP. 304, LAWS OF 2017)

Effective July 23, 2017; Summary Only – See Statutes for Details

CHARGING ACTUAL COSTS	CHARGING STATUTORY DEFAULT FEES	CHARGING ALTERNATIVE FLAT FEE	CHARGING PURSUANT TO ALTERNATIVE FEE ARRANGEMENT	CHARGING FOR CUSTOMIZED ACCESS SERVICE	WAIVING CHARGES (FEES)
					
<p>Agency can charge its actual costs directly incident to copying including:</p> <ul style="list-style-type: none"> Paper and per page cost for use of agency copying equipment Electronic production or file transfer of the record Use of any cloud-based data storage and processing service Costs directly incident to shipping including postage or delivery charges and cost of container or envelope Costs of transmitting the records in electronic format including the cost of any transmission charge and use of any physical media device provided by agency. 	<p>Agency can assess costs per the statutory fee schedule:</p> <ul style="list-style-type: none"> 15 cents/page paper 10 cents/page scanned into electronic format 5 cents/4 files or attachments and provided by electronic delivery 10 cents/gigabyte of electronic records transmission Actual costs of storage media, container, envelope; postage/delivery charge Charges can be combined if more than one type of charge applies. 	<p>Agency can charge alternative flat fee of up to \$2 for a request (rather than actual costs or default fees).</p>	<p>Agency can do an alternative fee arrangement, or in response to voluminous or frequently occurring requests.</p>	<p>Agency can charge up to actual costs for providing customized access services.</p>	<p>Agency can waive charges (fees).</p>
<p>REQUIREMENTS:</p> <p>(1) Agency must have a statement of the factors and manner it used to determine actual costs. Per page costs cannot exceed actual costs.</p> <p>(2) Can charge actual costs in the statement only after notice and a public hearing.</p> <p>(3) Use the most reasonable cost-efficient method available at the agency as part of normal operations.</p> <p>(4) Cannot include staff salaries, benefits or other general administrative or overhead unless directly related to actual costs of copying. Can include staff time to copy and send the records.</p> <p>(5) Cannot charge for records routinely posted on website unless requester asks for copies through other means.</p> <p>RCW 42.56.070(7)(a) and (b); RCW 42.56.120(1) and (2)(a) and (e)</p>	<p>REQUIREMENTS:</p> <p>(1) Agency must have a rule or regulation declaring the reasons calculating actual costs would be unduly burdensome.</p> <p>(2) Use the most reasonable cost-efficient method available at the agency as part of normal operations.</p> <p>(3) Cannot charge for records routinely posted on website unless requester asks for copies through other means.</p> <p>RCW 42.56.120(2)(b), (c) and (e)</p>	<p>REQUIREMENTS:</p> <p>(1) Agency must reasonably estimate and document that the costs are clearly equal to or more than \$2.</p> <p>(2) An additional flat fee or statutory default fee cannot be assessed after first installment (\$2 is the limit for the entire request).</p> <p>(3) Cannot charge for records routinely posted on website unless requester asks for copies through other means.</p> <p>RCW 42.56.120(2)(d) and (e)</p>	<p>REQUIREMENT:</p> <p>Agency is to have a contract, memorandum of understanding or other agreement with the requester.</p> <p>RCW 42.56.120(4)</p>	<p>REQUIREMENTS:</p> <p>(1) Agency estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes.</p> <p>(2) Agency must give requester estimate and other information. See statute.</p> <p>RCW 42.56.120(3) and (4)</p>	<p>REQUIREMENT:</p> <p>Agency may waive charges (fees) pursuant to its rules and regulations.</p> <p>RCW 42.56.120(4)</p>