

# Title 4 Public Records

## Chapter 01 Public Records

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### Division 1 Authority

#### 4.01.11 Definitions

- A. **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 sub-unit of the foregoing, any court of law, or any other person or entity so designated by Sec. 19.32(1) Wis. Stats.
- B. **Custodian.** That officer, department head, or employee of the City designated under Section 4.01.13 or otherwise responsible by law to keep and preserve any City records or file, deposit or keep such 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 such records.
- C. **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.

#### 4.01.12 Declaration of Policy

- A. A representative government is dependent on upon an informed electorate and therefore it is the policy of the City of Onalaska that all persons are entitled to the greatest possible information regarding the affairs of their government and the official acts of those officers and employees who represent them. Further, providing persons with such information is an essential function of government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, this ordinance shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest and only in exceptional cases may access be denied. Therefore, the City of Onalaska adopts and incorporates, as though fully set forth herein, the provisions of Wisconsin Public Records laws, Secs. 19.31 through 19.39 Wis. Stats. The provisions of this Chapter are intended to supplement, not to replace or supplant, the Wisconsin Public Records laws.

#### 4.01.13 Records Custodian(s)

- A. **Custodians.** The City Clerk is the legal custodian of the records of the Common Council as a body politic and for all Common Council boards, committees and commissions. Each alderperson shall be the custodian of their individual official records, such as their correspondence, memorandums and e-mail. Any alderperson may designate, in writing, the City Clerk to act as the official custodian of the alderperson's individual official records. For every Department, the Department Head is the custodian of records for their Department or Agency. Every custodian of records shall designate in writing one (1) or more employees to act in their absences as an alternate custodian of such records.
- B. **Duties of Custodians.** Custodians are vested with the full legal power to render decisions and carry out the duties of the City under this Ordinance. Each custodian shall establish procedures for handling records and shall see that all of their employees entrusted with records are informed of these procedures. Prior to providing access to or a copy of any records, the custodian shall review the records to determine that the records are responsive to the requests, whether any redactions are required or whether access should be denied as to any record. If a custodian has any question about granting or denying a request to inspect or copy any record, they shall consult with the City Attorney.
- C. **Public Records Training.** Each custodian and alternate custodian shall receive training regarding public records laws as soon as practicable upon receiving these duties. Custodians and alternate custodians are personally responsible for keeping current with any developments or advancements in records keeping and the Wisconsin Public Records Laws.

#### 4.01.14 Public Access to Records

- A. **Form of Request.** The Wisconsin Public Records Law dictates that certain actions must be taken with regards to oral requests for records and that certain more formal actions are taken in response to written requests for records. However, the state law does not expressly state how to respond to the following methods of communication. Therefore, requests made by the following means shall be responded to as follows:
1. **E-mail.** A request made by e-mail may be responded to via e-mail or in writing and shall have all of the formalities as though the request was made in writing.
  2. **Voice-mail.** A request made by voice-mail shall be responded to as though it were made orally.
  3. **Instant Messaging/Text Messaging.** A request made in either such manner shall be treated as an oral request.
- B. **Treatment of Certain Data as Records.** The Wisconsin Public Records Law provides little or no guidance as to whether the raw and perishable data of the following technologies qualify as records that must be maintained. Therefore the Onalaska Common Council determines the following status of these technologies
1. **E-mail.** The data in an e-mail message may constitute a public record and is subject to maintenance as a public record. The data in an e-mail is subject to the same analysis under the public records statutes as an equivalent paper or hard copy record. The Information Technology Department is responsible for ensuring that all e-mails are properly preserved for such analysis.
  2. **Voice-mail.** A voice-mail message is not a public record and voice-mail messages do not have to be maintained as public records. These messages are the functional equivalent of phone conversations. Phone conversations clearly are not public records. Additionally, these messages also share many of the attributes of "personal notes" which are not public records either. Finally, these messages cannot be indexed or maintained in any manner that would allow for their easy classification, searching or retrieval.
  3. **Instant Messaging (IM)/Text Messaging (TM).** Except as set forth in this paragraph and in Subparagraph 4.01.14.B.9. and 10. hereof, the data involved in IM/TM communications is not subject to maintenance as a public record. IM/TM has all of the attributes of instantaneous exchange of ideas, as does a regular telephone conversation. Furthermore, the data exchange has the same technological issues as to capturing and storage of data that is present with regards to voice-mail with an additional concern - the raw data is often only briefly stored or not stored at all by the third party vendors or hosts that provide these services. Thus, this technology is even closer to a true telephone conversation than are voice-mails. Therefore, City employees and officials shall refrain from using such services for official communications purposes or for matters that would result in a public record if another format such as email or written communications were employed, unless the employee or official preserves a copy of such communications by either copying them to their email account, downloading the communications to their City computer, making a computer file of the communications or by printing and retaining a copy of such communications.
  4. **Voice Over the Internet Protocol (VOIP).** The City does not monitor nor record the data associated with the conversations that occur over VOIP. Such conversations are the very same real time voice communications as standard telephone conversations that are not public records. The only difference between these communications is the medium employed in transmitting the voice communications from one (1) participant in the conversation to all others involved in the conversation.
  5. **Audio, Video, Data Transmissions & Communications.** Although audio, video, data and radio transmissions and communications may be processed through City computers, the City does not routinely copy the data nor maintain records of such communications. Whenever the City copies, records or maintains copies or recordings of such communications or transmissions, those copies may constitute public records that are subject to records requests and which must be maintained according to the appropriate records retention schedule. The La Crosse County 9-1-1 Dispatch center is the custodian for police and fire radio communications.
  6. **Photo/Audio/Video Recordings.** Unless otherwise provided herein, are public records subject to requests and must be maintained according to the retention schedules published herein.
    - a. **Rewritable Recording Systems.** Those systems where the recordings are routinely overwritten by newer recordings, such as in continuous loop videotape or digital video written to a camera's hard drive or memory, such data does not constitute a record unless it is further downloaded, printed or separately preserved to memorialize some event or proceeding. Until such time as these recordings are downloaded, printed or separately preserved, these recordings do not have to be preserved and, as the recording equipment programs/protocols may dictate, can be overwritten, erased or otherwise destroyed. However, if such data is downloaded, printed, or separately preserved it shall be treated as a record and shall be retained in accordance with the retention schedules.



- viewing of the redacted information then such redactions should be made by hand, not electronically, and the requestor shall only receive a hard copy, not an electronic copy, of the redacted record. A requestor may not be charged for the time necessary to review a record and to redact or excise non-releasable materials.
- b. **E-mailing Records.** When practicable and unless another form has been specifically requested, records shall be e-mailed to the requestor. There shall not be any reproduction charge for e-mailing records, however, such records may still be subject to payment of a location fee as established in Sec. 19.35(3)(c), Wis. Stats.
2. **Reproduction Fees.** The City of Onalaska shall adopt, at a minimum annually, a schedule of fees for the reproduction of records that shall be used by every department. Such schedule shall include the following provisions and considerations:
    - a. Fees imposed upon a records requestor may not exceed the actual, necessary and direct costs of reproducing and/or transcribing of the record, unless a fee is otherwise specifically established or authorized by state or federal law.
    - b. If the record exists in such a format that it cannot be easily reproduced, such as a mock-up of a building, then the custodian may photograph the record and may charge the requestor for the actual, necessary and direct costs of such photographing and photographic processing.
    - c. No charge for copying records of one hundred (100) pages or less.
    - d. Full cost of reproduction for materials such as films, tapes, computer printouts, etc. not otherwise identified in the schedule developed under this subsection. In such cases, the Department Head who is the records custodian, in consultation with the City Attorney, must determine the costs for reproduction of such records. The determination of these costs shall be made by utilizing a practice or factors that are as uniform as practicable across City Departments.
    - e. **Location Fee.** If the cost of locating a requested record is Fifty Dollars (\$50.00) or more, the requester shall pay the full cost, as determined by the Department Head. Such cost shall not exceed the actual, necessary and direct cost of locating such record. Whenever it is determined that such location costs will exceed Fifty Dollars (\$50.00) the requestor shall be required to post a deposit with the custodian that is equal to the reasonable good faith estimate of such costs.
    - f. **Mailing Fee.** Custodians shall impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or record that is mailed or shipped to the requester.
    - g. **Fee Waivers.** A custodian may provide copies of a record without charge or at a reduced charge where the Department Head determines in writing that waiver or reduction of the fee is in the public interest.
    - h. **Prepayment of Fees.** Custodians may require prepayment by a requester of any fee or fees imposed under this Chapter if the total amount exceeds Ten Dollars (\$10.00) and a custodian shall require prepayment by a requester of any fee or fees imposed under this subdivision if the total amount exceeds Fifty Dollars (\$50.00). If prepayment is required, the custodian shall not process the request until such prepayment has been posted with the custodian.
3. **Special Rules Regarding Reproduction of E-mail Records.**
    - a. **Reproducing Emails Dated Earlier than January 1, 2003.** Emails dated earlier than January 1, 2003 were not stored on the mail server but may be in a local archive. The restoration and location of these e-mails is difficult and labor intensive. Such requests for these records often take more than fifteen (15) business days to comply with due to labor and technical issues. Custodians who receive requests for these records should inform the requester of these issues. Such requests should be immediately forwarded to the Information Technology Department who may prepare an estimate of the actual, necessary and direct cost of locating such records and whom shall provide technical assistance to the custodian.
    - b. **Reproducing E-mails Dated After January 1, 2003.** Emails dated after January 1, 2003 are likely to have been preserved in a searchable format, many factors effect this and it is largely dependent on the systems in place during the date range of the emails and the user. When requests are made . Such requests for these records often take ten (10) or more business days to comply with due to the labor and technical issues.
4. **Time for Compliance and Procedures.**
    - a. **Time.** The fulfillment of public records requests is a high priority for the City. Therefore, each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of their determination to deny the request in whole or in part and the reasons therefore. If a request may take more than ten (10) business days to process, then the custodian must respond to the requestor within those ten (10) days with an estimate of when such processing shall be completed and an explanation of the reasons supporting that estimate.
    - b. **City Attorney Consultation Required.** Before any custodian may deny access to any records or portion thereof, the custodian must consult with the City Attorney. Such consultation shall occur

as soon as practicable after the custodian has assembled and reviewed the requested record. In any response to a requestor, the custodian shall include a statement that he or she consulted the City Attorney regarding the denial of access to any records. Any denial of access made by a custodian without such consultation and statement is not considered a response from the City of Onalaska.

5. **No Destruction of Records While a Request is Pending or While a Denial of a Request is Being Appealed.** No custodian may destroy any record at any time after the receipt of a request for inspection or copying of the record until after the request is granted or until at least sixty (60) days after the date that the request is denied. If any legal action is pending regarding or related to the record, the record may not be destroyed without the express authorization of the City Attorney. No record that is the object of or which has been produced pursuant to a discovery order or a subpoena may be destroyed without the express consent of the City Attorney.
6. **Retention Schedules.** The City of Onalaska, in accordance with Secs. 19.21(4)(b) and 16.61(3)(e), Wis. Stats., adopts the following record retention schedules:
  - a. **Retention Schedule.** The City of Onalaska adopts the State of Wisconsin Municipal Records Retention Schedule. A copy of the complete schedule is attached to this Title as Appendix A.
  - b. **Records that are Evidence.** No record may be destroyed that has been identified as, or that may have value as, evidence in any civil or criminal legal proceeding, labor arbitration or disciplinary action. No record may be destroyed at any time within sixty (60) days of the denial of a request to review the record or any part thereof.
  - c. **Compliance with Federal or Other Record Retention Requirements.** Notwithstanding the City of Onalaska Records Retention Schedule set forth in Subparagraph a. above, custodians may not destroy any record where any contract, grant, funding conditions, state or federal statute require that such records be maintained for a longer period of time.
  - d. **Offer of Records to State Historical Society Before Destruction.** The City is required to offer all obsolete records to the State Historical Society in accordance with Appendix A prior to destruction of those records. The Information Technology Director or any Department Head, may apply to the State Historical Society for a waiver of this requirement as to certain categories of records under such person's authority that they reasonably believe have little or no significant historical value.
- D. **Electronic Formatting or Other Reproduction of Records.** Any City officer or Department Head may, with the approval of the City Attorney's office in consultation with the Information Technology Department, may retain and preserve public records in their possession by means of microfilm, or another reproduction method, optical imaging or electronic formatting. Such records shall meet the standards for photographic reproduction set forth in Secs. 16.61(7)(a) and (b) Wis. Stats., and Chs. PR 1 and Wis. Admin. Code 12. Such records 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 of Subsections (1) through (3) of this ordinance. This ordinance does not require that past copies of a record be converted to the new format(s). However, when the decision is made to convert old records to the new format, the original hardcopy of any document or record which has been converted to the new format may be destroyed once the Records Disposition Authorization for that records classification has been approved by the Wisconsin State Public Records Board and only when such destruction is permissible under Subsection (7) of this ordinance. A requester shall be charged a fee to defray the cost of copying records. The fee shall be set forth on the City of Onalaska Fee Schedule. The actual cost of duplication shall be charged for oversized documents.

#### 4.01.15 Limitations on Right to Access

- A. As provided in Sec. 19.36, Wis. Stats., the following records are exempt from inspection under this Chapter.
  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 and files, although the material used as input for a computer program/file or the material produced as a product of the computer program is subject to inspection; and
  4. Pursuant to Sec. 905.08, Wis. Stats., a record or any portion of a record containing information qualifying as a common law trade secret. "Trade secrets" are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes which are used for making, preparing, compounding, treating or processing articles, materials or information which are obtained from a person and which are generally recognized as confidential.

- B. As provided by Sec. 43.30, Wis. Stats., public library circulation records are exempt from inspection under this Section.

#### **4.01.16 Preservation Through Microfilm or Other Imaging Technology**

- A. Any custodian, may, subject to the approval of the City Clerk, keep and preserve public records in their possession by means of microfilm or other photographic or image reproduction methods. Such records shall meet the standards for reproduction set forth in Sec. 16.61(7)(a) and (b), Wis. Stats., and shall be considered original records for all purposes. Such records shall be preserved along with other files of the department and shall be open to public inspection and copying pursuant to the provisions of state law and this Chapter.