

**CITY OF XENIA, OHIO
RESOLUTION 2022 – UU**

ADOPTING THE CITY OF XENIA PUBLIC RECORDS POLICY

WHEREAS, ORC 149.43(E)(2) requires all public offices to adopt a public records policy in accordance with ORC 149.43, known as the Ohio Public Records Act, for responding to public records requests;

WHEREAS, the City’s current public records policy, as contained in Xenia City Code Section 289.06, will be repealed as of August 27, 2022, pursuant to Ordinance 2022-21; and

WHEREAS, in order to comply with the Ohio Public Records Act and in order to make much needed updates to the City’s official Public Records Policy, this Council finds it in the best interests of the citizens of Xenia to adopt a new Public Records Policy.

NOW, THEREFORE, THE CITY OF XENIA HEREBY RESOLVES, a majority of the members of Council present concurring, that:

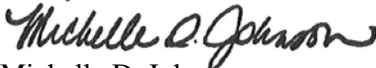
Section 1. The City of Xenia Public Records Policy, attached hereto as Exhibit A, is hereby adopted.

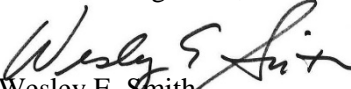
Section 2. It is found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including ORC 121.22.

Section 3. This Resolution shall become effective on August 27, 2022.

Passed: August 25, 2022

Attest:


Michelle D. Johnson
City Clerk


Wesley E. Smith
President, Xenia City Council

**CITY OF XENIA
PUBLIC RECORDS POLICY**

1. DEFINITIONS.

All words used in this Policy shall have their customary meaning, except those specifically defined in this section:

(a) City. Where the term “City” is used herein, it shall mean the Xenia City Council, administrative offices, boards, commissions, committees, departments, divisions, public officials or other persons having charge and custody of the public records being requested.

(b) Commercial. “Commercial” does not include reporting or gathering news; reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government; or nonprofit educational research.

(c) Cost. “Cost” means the cost of depleted supplies; record storage media costs; actual mailing costs; any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services or transcription services; and/or any other cost for materials, equipment, and other things necessary for the retrieval, copying and transmitting of the records.

(d) Journalist. “Journalist” means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(e) Prompt. This standard will be judged within the context of the circumstances of each individual request, taking into account the volume of record requested, the proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.

(f) Public Record. “Public record” shall mean any record kept by the City, shall be determined by an “actual use” standard, and shall be defined as in ORC 149.43(A) and the same exceptions outlined in ORC 149.43(A) shall apply. To be a public record, the record must be one that is being kept by the City at the time a public records request is made. The City has no obligation to create new records nor to perform a search or research for information in the City’s records to gather information in response to a public records request.

(g) Reasonable. This standard will be judged within the context of the circumstances of each individual request, taking into account the volume of records requested, the proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.

(h) Reasonable Request. A request to inspect public records, or for copies thereof, shall reasonably identify, with sufficient clarity to allow the City to identify, retrieve and review the records, what public records are being requested and shall not be ambiguous or overly broad. If a request is not reasonable, the City may deny the request but shall provide the Requester with an opportunity to revise the request by informing the Requester of the manner in which records are maintained and accessed in the ordinary course of the City’s business.

(i) Record. A record includes any document, device or item, regardless of physical form or characteristic, including an electronic record as defined in ORC 1306.01, created or received by or coming under the jurisdiction of the City that serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the City.

(j) Redaction. “Redaction” means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of “record” contained in ORC 149.011.

(k) Regular Business Hours. “Regular Business Hours” means the normal business hours of the City Administration Building, excluding holidays or any day that the City Administration Building is closed.

(l) Requester. A person requesting inspection of/copies of public records. The Requester does not have to put his or her request in writing and does not have to provide his or her identity or disclose the intended use of the requested records; however, the City may legally ask the person requesting the inspection or copies of public records for a written request, the Requester’s identity, and/or may inquire about the intended use of the information requested when:

- (1) A written request or disclosure of identity or intended use would benefit the Requester by enhancing the City’s ability to identify, locate or deliver the public records that have been requested; and
- (2) The Requester is first told that a written request is not mandatory and that the Requester may decline to reveal the Requester’s identity or the intended use.

Nothing in this section, however, shall limit the City’s right to ask for certification that the records will not be used for commercial purposes, as otherwise provided in this Policy.

2. INSPECTION OF RECORDS.

(a) Inspection. Subject to the limitations set forth in Section 6, all public records maintained by the City shall be promptly prepared and made available for inspection to the Requester within a reasonable amount of time, upon reasonable request, during regular business hours; as long as, in the City’s sole discretion, such inspection does not endanger the safety of the record, does not unreasonably interfere with the discharge of the duties of the City officer having custody of the records, and/or does not contain information that must be redacted pursuant to federal or state law.

(b) Redactions. If the records to be inspected contain information that must be redacted under federal or state law or information that is authorized to be redacted under federal or state law, the Requester shall pay, in advance, the cost of all copies that were created in order to meet the Requester’s inspection request. The Requester shall be notified of any redaction and/or the redaction shall be made plainly visible.

(c) Limitation. A City employee or official may accompany the Requester during inspection to assure original records are not taken or altered. No Requester shall be permitted to make his or her own copies of any inspected records.

3. COPIES.

(a) General. Subject to the limitations set forth in Section 6 of this Policy, the following shall apply to all requests for copies of any public records:

- (1) *Reasonable Request*: A request for copies of any public records does not have to be in writing, does not have to provide the identity of the Requester or the intended use of the records, but must be specific and particularly describe what is being sought. The City may ask for a written

request, the Requester's identity and/or the intended use of the information only in accordance with Section 1(1). If a request is ambiguous or overly broad, or if the City cannot reasonably identify what public records are being sought by the request, then the City may deny the request, but shall provide the Requester with an opportunity to revise the request by informing the Requester of the manner in which records are maintained and accessed in the ordinary course of the City's business. The City does not have an obligation to create new records or perform a search or research for information in the City's records.

- (2) *Medium*: Any person making a reasonable request for a copy of a public record may choose to have the public record duplicated on paper, upon the same medium upon which the City keeps it, or upon any other medium upon which the City determines that it can be reasonably duplicated as an integral part of the normal business operations of the City. The City shall provide a copy of the public record in accordance with the choice made by the person seeking the copy; provided, however, that the Requester has paid in advance for cost of the copy or copies.
- (3) *Size of Request*: If a request is of such a magnitude or scope that the only way for the City to meet such request is to hire an outside contractor to make the copies, such request will only be met upon the payment of the costs of said services by the Requester directly to the contractor.
- (4) *Response Timeframe*: Copies of public records will be made available within a reasonable period of time, taking into account the volume of records requested, the proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.

(b) Recordings.

- (1) Copies of the audio recordings of public meetings, when such recordings are maintained by the City as records, may be requested. Copies of the recordings will be available upon payment of cost. A request for more than three tapes, CDs or other medium will be made available within a reasonable amount of time. The cost of duplicating the recording(s) must be paid in advance. No person requesting a copy of a recording shall be permitted to make his own copy.
- (2) The cost for transcription of the recordings will be the actual cost to the City of hiring someone to transcribe the recordings and must be paid in advance. A request for a transcription shall require a minimum of two (2) to three (3) weeks per recorded meeting before the copy will be available in the requested form.
- (3) Requests for copies of any audio recording of a meeting should be made promptly, as some recordings are used only for the purpose of preparing minutes and are not maintained by the City as records for a definite time.

(c) Paper Copies.

- (1) Requests for paper copies of public records maintained by the City shall be available upon payment of costs for the copies and will be made available within a reasonable amount of time, depending upon the size of the public record(s) requested. The cost of copying must be paid in advance. No person requesting a copy of a public record maintained by the City in paper form shall be permitted to make his own copy.
- (2) Regardless of the medium of the public records requested and/or the medium of the requested copies, if redactions to a public record must be made, copies of that public record will be necessary in order to make the required redaction. The Requester will be charged the cost of copying in such instances, which must be paid in advance.

(d) Electronic Records. Records in the form of e-mail, Excel spreadsheets or other electronic formats will be treated in the same fashion as records in other formats, such as paper or audiotape. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through the City's standard use of sorting, filtering or querying features. If a copy of an electronic record is requested

in paper form or on CD, or if the electronic record can only be provided in paper or on CD, the Requester shall pay the cost of the copies.

(e) Costs. The City shall require the Requester to pay in advance the cost involved in providing the copy or copies of the public record(s) requested, in accordance with the choice made by the Requester under subsection (a)(2) of this Section. Such costs shall include:

- (1) Paper Copies:
 - 8½” x 11 to 11” x 17” \$0.05 per page
 - 24” x 36” \$2.00 per page
- (2) CD/DVD \$3.00 per CD/DVD
- (3) Flash Drive Actual cost per drive

(f) Delivery. Copies of public records shall be transmitted to the person requesting them by United States mail or by other means of delivery or transmission within a reasonable period of time, provided the Requester has paid the copying and/or delivery costs, if any.

- (1) *Mailing* - If the copies are transmitted by U.S. mail, the Requester must pay in advance the cost of postage and any other costs incurred for other supplies used in the mailing, delivery or transmission.
- (2) *Other Delivery Service* - If the copies are transmitted by a delivery service such as UPS or FedEx, the Requester must pay in advance the cost of such delivery and any other costs incurred for other supplies used in the delivery or transmission.
- (3) *By Email* - There will be no delivery charge for copies transmitted by e-mail.
- (4) *In Person* - If the Requester chooses to pick up the requested copies in person, he or she will be asked to sign for such records, in order to provide the City with documentation that the Requester’s request has been met.

4. REDACTION.

(a) Redactions. If a requested public record contains information that is exempt from the duty to permit public inspection or to copy the public record or which is required by law to be withheld, all of the information within the public record that is not exempt shall be made available to the Requester. When making the public records available for inspection or when providing copies of the public record, the City shall notify the Requester of any redaction/and or make the redaction plainly visible.

(b) Limitation on Requested Medium. If a request for a copy of a public record that is on a medium other than paper is made and that public record contains information that is exempt from disclosure and must be redacted, such redaction may require the City to provide the requested public record on paper, despite the Requester’s request to have the copy in another medium.

(c) Effect of Redaction. A redaction shall be deemed a denial of a request to inspect or for a copy of the redacted information, except if federal or state law authorizes or requires the redaction.

5. DENIAL OF REQUEST.

(a) Explanation of Denial. If a request to inspect or for copies of public records is ultimately denied, in part or in whole, the City shall provide the Requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation of the denial shall also be provided to the Requester in writing. The explanation shall not preclude the City from relying upon additional reasons or legal authority in defending an action commenced under ORC 149.43(C).

(b) Ambiguous or Overly Broad Requests. If a Requester makes a request that is ambiguous or overly board, or if the request is such that the City cannot reasonably identify what public records are being requested, the City may deny the request but shall provide the Requester with an opportunity to revise the request by informing the requester of the manner in which the records are maintained and accessed in the ordinary course of business.

6. LIMITATIONS.

(a) Commercial Use.

- (1) The number of records requested by any person that the City will physically deliver by U.S. mail or other delivery service shall be limited to ten (10) per month, unless the person certifies to the City, in writing, that the person does not intend to use or forward the requested public records, or the information contained in them, for commercial purposes.
- (2) For all public records that the City provides on a website that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the City's control or maintenance of the website, and that charges no fee to search, access, download or otherwise receive records provided on the website, the number of records requested by any person that the City will deliver in a digital format shall be limited to ten (10) per month, unless the person certifies to the City, in writing, that the person does not intend to use or forward the requested public records, or the information contained in them, for commercial purposes.

(b) No Right to Make Own Copies. No person requesting to inspect or requesting copies of any public record shall have the right to make his or her own copies of the public record.

(c) Incarcerated Individuals. The City is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or obtain a copy of any public record concerning what would be a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request is for the purpose of acquiring information that is subject to release as a public record under Ohio law and this Policy and the judge who imposes the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(d) Defendants. A request by a defendant, counsel of a defendant or any agent of a defendant in a criminal action that public records related to that action be made available under this Policy shall be considered a demand for discovery pursuant to Ohio's Criminal Rules of Procedure, except to the extent that the Criminal Rules of Procedure plainly indicate a contrary intent. The defendant, counsel of the defendant or agent of the defendant making a request for public records under this Policy shall serve a copy of the request on the City's Prosecutor.

7. SPECIAL REQUESTS.

(a) Journalists. Requests from journalists for the following records shall be made in writing, shall include the journalist's name, title, the name and address of the journalist's employer, and a statement that the disclosure sought would be in the public interest, and shall be signed by the journalist making the request:

- (1) The personal residential address of a designated public service worker, as that same is defined in ORC 149.43;
- (2) Customer information maintained by any City owned or operated utility (not including social security numbers and private financial information);

(3) Information about minors involved in a school vehicle accident as provided in ORC 149.43(A)(1)(gg), other than personal information as defined in ORC 149.45.

(b) Victims. Upon a request made by a victim, victim's attorney, or victim's representative, as that term is defined in ORC 2930.02, the City shall transmit a copy of a depiction of the victim, as described in ORC (A)(1)(ii) to the victim, victim's attorney, or victim's representative.

8. PURPOSE; CITY DUTIES.

(a) Purpose. Openness leads to a better informed citizenry, which leads to better government and better public policy. It is the intent of the City of Xenia to at all times fully comply with, and abide by, Ohio's Public Records Act.

(b) Managing Records. To facilitate broader access to public records, each department, division, or office of this City shall organize and maintain the public records under its control in a manner that they can be made available for inspection or copying in accordance with procedures set forth in this Policy.

(c) Records Retention. The City's records are subject to records retention schedules. The records retention schedules for the various City departments, divisions, offices, boards, commissions, and committees shall be made available at the City Administration Building and/or on the City's website, as required by ORC 149.43(B)(2).

(d) Training. To ensure that all City employees are appropriately educated regarding the City's obligations under the Ohio Public Records Act, all elected officials or their appropriate designees shall attend training approved by the Ohio Attorney General.

(e) Adoption. This Policy is adopted in accordance with ORC 149.43(E)(2).

(f) Distribution. This Policy shall be distributed by the appointed officials to the employees under their supervision and control who are the records custodians, records managers, or who otherwise have custody of the records of the departments and divisions under the appointed official's control. Such employees shall be required to acknowledge receipt of this Policy.

(g) Posting. The City Clerk shall post this Policy in a conspicuous place in the City Administration Building, the Justice Center, and any other City facility open to the general public and shall post this Policy on the City's website.

(h) Personnel Manual. In accordance with ORC 149.43(E)(2), this Policy shall be included in the City's Personnel Manual.