

FRANKLIN COUNTY ORDINANCE NUMBER 4-2009

**AN ORDINANCE ESTABLISHING THE PROCEDURE BY WHICH PUBLIC RECORDS REQUESTS ARE ADMINISTERED, ADDING A NEW CHAPTER TO THE FRANKLIN COUNTY CODE.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FRANKLIN COUNTY, STATE OF WASHINGTON:**

**SECTION 1 - PURPOSE**

The purpose of this ordinance is to provide rules by which the County shall implement the provisions of the Public Records Act.

**SECTION 2 - DEFINITIONS**

The definitions set forth in RCW 42.56.010 as hereafter amended shall apply to this ordinance.

**SECTION 3 - INTERPRETATIONS**

The provisions of this Ordinance shall be liberally interpreted and construed to promote full access to records maintained by Franklin County while preventing unreasonable invasions of privacy, protection of public records and interference with essential County functions.

**SECTION 4 - PUBLIC RECORDS AVAILABLE**

Public records shall be made available for public inspection and copying pursuant to this Ordinance, except as otherwise provided by law.

**SECTION 5 - EXEMPT RECORDS**

Public Records and information exempt from disclosure under the Public Records Act or any other law shall be exempt from disclosure under this Ordinance whether or not such exemption is on any list of exemptions published and maintained by Franklin County.

**SECTION 6 - DOCUMENT FILING SYSTEM - INDEX**

No document filing system is maintained that indexes all public records, as the Board of Franklin County Commissioners passed Ordinance 29-2002 explaining why it is unduly burdensome to formulate and maintain every index otherwise required by RCW 42.56.070.

**SECTION 7 - PUBLIC RECORDS OFFICER CONTACT INFORMATION**

A. Each office of an elected official, department, board, and committee shall have a Public Records Officer. Any person wishing to request access to public records, or seeking assistance in making a request should contact the Public Records Officers whose names shall be posted on the Franklin County web-site:

<http://www.co.franklin.wa.us>

B. If a Public Records Officer for any other elected office, department, board or committee is unavailable the Public Records Officer for the Board of County Commissioners may be contacted for assistance. See Departmental Contact information, Appendix D, posted on the County web-site.

C. The elected official is the Public Records Officer for that official's office, unless the elected official designates in writing another person as the Public Records Officer for that official's office. See Departmental Contact information, Appendix D, posted on the County web-site.

D. Each department head reporting to the Board of County Commissioners is the Public Records Officer for that department, unless the department head designates in writing another person as the Public Records Officer for that department. See Departmental Contact information, Appendix D, posted on the County web-site.

E. The Franklin County Administrator is the Public Records Officer for every board or committee not listed herein that is appointed by and reports to the Board of County Commissioners, unless otherwise specified by resolution.

#### **SECTION 8 - REQUESTS FOR PUBLIC RECORDS - HOW MADE**

A. All requests for public records shall be directed to the Public Records Officer for the office of the County where the record is located. If the location of the record is unknown, the request should be made to the Franklin County Administrator.

B. A request for public records shall be made in writing; verbal requests will only be accepted in person.

C. The "Public Records Request" (PRR) form is the preferred method for submitting requests. The PRR form aids the County in assuring that the requester is provided all the records requested. The PRR form, Appendix A, is posted on the County web-site.

D. Record requests involving equal to or greater than 35 copies, or \$5.25 in cost, must be paid for before the request will be released. No sales tax will be charged.

E. Record requests involving equal to or greater than 350 copies, or \$52.50 in cost, require a 10% deposit before copying of the records will commence. No sales tax will be charged.

F. Record requests involving equal to or greater than 2000 copies or require more than 30 days to fulfill may be completed on an installment basis. Each installment must be paid for before release and no installment will be commenced without payment of ten (10) percent deposit. No sales tax will be charged.

G. There is no obligation to provide duplicate copies of a public record.

H. The County copies electronic records, commonly referred to as "backing-up." Such copies are in inactive form. To prevent interference with essential functions of the County, there is no obligation to respond to a public records request by searching backup tapes or other similar media for identifiable records.

I. Public records are available for inspection and copying during normal business hours. Though some offices may operate different hours, the generally applicable normal business hours are: Monday - Friday 8:30 a.m. - 4:30 p.m. except from 12:00 p.m. - 1:00 p.m. and except legal holidays.

#### **SECTION 9 - REQUESTS FOR PUBLIC RECORDS - RESPONSES**

A. The Public Records Officer shall respond promptly to requests for disclosure. There is no obligation to allow inspection or provide a copy of a public record immediately on demand.

B. Within five (5) business days of receipt of a public records request, the Public Records Officer shall respond, if feasible and in compliance with this policy, by the requestor's preferred method of communication. The Public Records Officer shall make one or more of the following responses:

- (1) The request for inspection of public records is approved and whether an appointment for inspection needs to be scheduled by the requestor;
- (2) The request for copies of public records is approved and the copies of all requested records are enclosed with the response if payment is waived;
- (3) The request for copies of public records is approved and the copies of all requested records are available upon payment if payment is not waived;
- (4) The request has been received by the Public Records Officer, that additional time is needed to respond to the request based on reasons set forth in subsection (c) below, and stating a reasonable estimate of the time required to respond;
- (5) The request has been received by the Public Records Officer and the records request requires a deposit in order to begin copying;
- (6) The request has been received by the Public Records Officer and the records shall be provided on an installment basis as the records are identified, located, assembled and/or made ready for inspection or copying; and/or
- (7) The request is denied, in whole or in part, whether by withholding a requested record or redacting a requested record, stating the specific exemption(s) prohibiting disclosure and a brief explanation of how the exemption applies to each withheld and redacted record.

C. The Public Records Officer may need additional time to respond to a request based upon the need to:

- (1) Clarify the intent of the request;
- (2) Locate and assemble the records requested;
- (3) Notify third persons or agencies whose rights may be affected by the inspection or disclosure of the records;
- (4) Determine whether any of the records or portions thereof are exempt and that a denial should be made as to all or part of the request; or
- (5) Forward the request to a specific department or office which the Public Records Officer believes may have the requested records.

D. If a County agency does not have the record or information requested, but believes that another County agency does, the Public Records Officer shall, after providing a written response to the requester that his or her office does not have the requested public record, forward the request to any other County department, office, commission or board that the Public Records Officer knows or believes may possess the requested record(s).

E. If a public record request is unclear; the Public Records Officer may ask the requester by the requester's preferred method of communication to clarify, if feasible and in compliance with this policy, what records the requestor is seeking.

F. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the Public Records Officer may, prior to providing

the records, give notice to such others whose rights may be affected by the disclosure. The notice to the affected person shall identify the request or include a copy of the request.

G. The person seeking disclosure shall be entitled to petition the Franklin County Prosecuting Attorney for a review of any denial or time estimate given by a County Public Records Officer or seek redress as allowed in Chapter 42.56 RCW.

H. Each Public Records Officer, elected official's office, department, board or committee will provide space to inspect public records. No member of the public may remove an original document from such place. The requestor shall indicate which documents he or she wishes the agency to copy. An employee will be present for the duration of the inspection of records. Inspection of records by a requester shall be limited to two hours per day or 4 hours per week.

I. When the request involves equal to or greater than 2000 copies or requires more than 30 days to fulfill, it will be completed on an installment basis. The Public Records Officer will provide access for such inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way.

J. If a requester fails to inspect records, provide a deposit, provide payment or provide clarification within thirty (30) days of notice to do so, the Public Records Officer shall close the request and shall indicate in writing to the requester that the request is closed.

K. The Public Records Officer shall promptly notify the Franklin County Prosecuting Attorney when a request for public records concerns a subject that is known to the Public Records Officer to involve a claim or lawsuit that is pending or anticipated. The Public Records Officer shall deliver a copy of the request, a copy of the written response, including all documents provided to the Prosecuting Attorney. There shall be no charge to the requesting party for copies delivered to the Prosecuting Attorney.

#### **SECTION 10 - REQUESTS FOR PUBLIC RECORDS - ELECTRONIC RECORDS**

The Public Records Officer, when responding to a public records request for electronic data where creation of a record, programming, or particular format are questionable, may respond to the request, provided the effort would be a business as usual approach. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, time and manpower, and/or would cause a significant interference with the essential functions of the County. The County has no obligation to convert an electronic record to a different format.

#### **SECTION 11 - COPYING AND DELIVERY FEES**

A. No fee will be charged for the following activities:

- (1) Inspection of a public record;
- (2) Locating public records and making them available for copying;
- (3) Searching for public records;
- (4) Redacting portions of the record which are exempt from disclosure; or
- (5) Preparing an index of exempt documents.

B. The Public Records Officer may waive the fee for less than thirty-five (35) pages or a total cost of \$5.25 on the basis that the expense of processing the payment exceeds the costs of providing the copies.

C. Except as otherwise allowed in subsection (B) herein, a reasonable fee shall be charged to reimburse the County for the costs of providing copies of public records, including mailing costs. Payment shall be made by cash or money order payable to the office from which the record was provided. A department with the capability to receive payment by credit may do so at its discretion. The Public Records Officer shall require that all charges be paid in advance of the release of the copies.

D. The fee schedule in Appendix B (posted on the County web-site) is applicable to public records requests unless the copying is done by a third person for hire or a different fee is fixed by this ordinance, by other County ordinance as hereinafter amended, or federal or state law. The fee schedule reflects the cost per page considering the staff time spent and the cost of supplies to make copies of the documents.

E. The fee for providing a copy of public records may be set by state statute or federal law. Where the state or federal law sets a fee for providing a copy of a record, that fee will be charged.

F. Any request for more than thirty-five (35) pages of documents, oversized documents, photographs, recorded images or sounds and computer disks or any other record that cannot be copied or duplicated with the County's equipment may be sent by the County to a private duplicating service agency for copying, in which case the fee shall be the actual charge imposed for copying, plus applicable taxes and shipping costs.

G. Before beginning to make copies that involve equal to or greater than 350 copies, or \$52.50 in cost, the Public Records Officer or designee shall require a deposit of up to ten (10) percent of the estimated costs of copying all the records selected by the requester. The Public Records Officer or designee shall also require payment of the remainder of the copying costs before providing all the records, or the payment of the cost of copying installment before providing the installment of records. No sales tax will be charged.

## **SECTION 12 - PROTECTION OF PUBLIC RECORDS**

A. The Public Records Officer shall, to the extent practicable, ensure that records requested are not removed from the premises nor portions thereof removed by members of the public except as necessary to make copies by an employee or private duplicating service agency. Documents shall not be released to the public for the purpose of allowing the person making the request to make copies.

## **SECTION 13 - EXEMPTIONS**

A. Chapter 42.56 RCW and other laws designate certain types of records are exempt from public inspection and copying.

B. The County hereby adopts the list of laws maintained by the Municipal Research Services Center (MRSC) as the list containing every law, other than those listed in Chapter 42.56 RCW, which the County finds exempts or prohibits disclosure of certain types of public records held by the County. Any elected official or department head may establish their own list if they so choose.

C. Appendix C (posted on the County web-site) lists subjects of some frequently applicable exemptions which may present concerns regarding disclosure. Any denial of a request for public records must reference the state statute, federal statute, or common law basis for such denial.

D. If a Public Records Officer determines that all or part of any records should not be disclosed pursuant to Chapter 42.56 RCW or other law, the Public Records Officer may consult with the Prosecuting Attorney's Office prior to denying the request or redacting information from a public record.

#### **SECTION 14 - DENIAL OF PUBLIC RECORD REQUESTS – OBJECTION - REVIEW**

A. Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the Franklin County Prosecuting Attorney. The written request shall specifically refer to the written statement by the Public Records Officer or other staff member which constituted or accompanied the denial. The written request should state "Public Records Request Petition".

B. Upon receiving a written request for review of a decision denying a public record, the Franklin County Prosecuting Attorney shall request a response from the Public Records Officer or other staff member denying the request. The Prosecuting Attorney, or his/her designee, shall consider the matter and either affirm or reverse such denial within two (2) business days following the receipt of the written request for review of the denial of the public record.

C. Administrative remedies shall not be considered exhausted until the Prosecuting Attorney or his/her designee has made a written decision, or until the close of the second (2nd) business day following receipt of the written request for review of the denial of the public record, whichever occurs first.

D. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two (2) business days of the initial denial regardless of any internal administrative appeal.

#### **SECTION 15 - ADOPTION OF FORM - REQUEST FOR PUBLIC RECORDS**

The County hereby adopts for use by all persons requesting inspection and/or copies of records maintained by the County the form entitled "Request for Public Records." See Appendix A, posted on the County web-site. The form will be maintained by the Franklin County Prosecuting Attorney.

#### **SECTION 16 - PUBLIC RECORDS ACT - PAMPHLET AVAILABILITY**

The Office of the Attorney General has a pamphlet available, written in plain language, explaining the provisions of the Public Records Act. Requests for a copy of the pamphlet should be directed to the Public Records Officer, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100. Additionally, a desk book pertaining to the Public Records Act is available at the website for the Washington State Attorney General.

#### **SECTION 17 - RETENTION AND DESTRUCTION OF PUBLIC RECORDS**

A. The Washington State Archivist has developed retention schedules for many categories of local government records, including e-mail and electronic records. Records of the County should be retained and destroyed consistent with the retention schedules. Copies of the retention schedules are available from Archives and Records Management of the Office of the Secretary of State and online at the state website.

B. If a public record request is made at a time when a record exists, but is scheduled for destruction in the near future, the Public Records Officer shall direct that the record be retained until the request is resolved. E-mail is not necessarily a records storage system. Backup copies of public records performed by central services staff are not a substitute for records retention. Backups are for disaster recovery only.

#### **SECTION 18 - SEVERABILITY**


If any provision of this ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

**SECTION 19 - EFFECTIVE DATE**

This ordinance shall take effect and be in full force upon its passage and adoption.

PASSED this 18 day of February, 2009.

BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON

  
\_\_\_\_\_  
Rick Miller, Chair

  
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Robert E. Koch, Chair Pro Tem

**Brad Peck - Absent**  
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Brad Peck, Member

ATTEST:

  
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Clerk of the Board

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Benjamin Zelen  
Deputy Prosecuting Attorney

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