

## FREEDOM OF INFORMATION ACT REQUESTS

### I. PURPOSE:

The following guideline establishes policies and procedures for a City-wide policy for responding to Freedom of Information (FOI) Requests for Public Records under the Arkansas Freedom of Information Act.

### II. RESPONSIBILITY:

- A. The ultimate responsibility for responding to FOI Requests for Public Records shall be vested in the City Manager.
- B. The threshold responsibility for properly responding to FOI Requests for Personnel Records of any kind maintained by the Human Resources Department shall be vested in the Human Resources Department Director.
- C. The threshold responsibility for properly responding to FOI Requests for personnel records maintained by an individual Department shall be vested in the Department Director maintaining the particular personnel records for which disclosure is sought.
- D. The threshold responsibility for properly responding to FOI Requests for Public Records other than personnel Records shall be vested in the Department Director maintaining the records or documents for which disclosure is sought.

### III. DEFINITION:

This guideline shall apply to all City Departments. For purposes of this guideline, the following definitions shall apply:

- A. FOI Requests: Any request, either oral or written, by any individual requesting a copy of or access to any Public Record.
- B. Public Record: Any document, writing, recorded sound, film, tape or data compilation in any form a) required by law to be kept; or b) otherwise kept and which constitutes a record of the performance or lack of performance of official functions which are or should be carried out by any official or employee for the City. Any document maintained in or by any Department of the City is presumed to be a Public Record.

- C. Personnel Record: Any Public Record, the subject of which is a particular City Employee or group of City Employees, including, but not limited to, those documents ordinarily maintained in an employee's formal Personnel File and all employee evaluations and job performance records.

#### IV. POLICY

The procedure for responding to FOI Requests for Personnel Records shall differ from that of responding to FOI Requests for records other than Personnel Records.

- A. Personnel Records: Personnel Records shall be divided into four (4) categories. The custodianship and actual physical whereabouts of particular Personnel Records are to be determined by reference to these categories. These categories are not determinative of whether a particular record or specific sub-parts there of are subject to public inspection under the Freedom of information Act. Discoverability shall be determined on a case-by-case basis by comparing the document(s) sought with the particular exemptions to the general rule of Discoverability contained in the Act.

Category I: Information/documents which, if existing at all, must be copied within the employee's official personnel file maintained in the Human Resources Department. Departmental copies are optional.

1. The Human Resources Department Director shall be the custodian of each present and past employee's official Personnel File, and all records/documents, therein, said file to be physically maintained by the Human Resources Department. The following Category I information/documents, to the extent that they exist, shall be maintained by the Human Resources Department in each employee's official Personnel File. Departmental copies are optional.
  - a. Job Applications
  - b. Personal Resumes
  - c. Driver's License Information
  - d. Social Security Number
  - e. Medical Questionnaires and Information, Including Physical and Psychological Evaluations
  - f. Background Investigations of former Police
  - g. Employment Test Scores
  - h. Benefit Enrollment and Change Forms
  - i. OP-4's
  - j. Documentation of Disciplinary Actions
  - k. Letters of Commendation and Appreciation
  - l. Job Descriptions

- m. Worker's Compensation Records
- n. Termination Clearance Forms
- o. EPAS I Data Sheets & EPAS II Confidential Cover Sheets
- p. Police Reports Related to Employee Performance
- q. Letters Offering Employment
- r. Letters of Employment Acceptance
- s. Letters of Resignation
- t. Reference Sheets Cross Indexed to Background Investigations, and closed Little Rock Police Department (LRPD) Internal Investigation Files. Actual Files will be physically held at the LRPD.

Category II: Information/documents maintained on employees at the Departmental level only.

1. A document need not be actually placed in an official Personnel File maintained in the Human Resources Department to be a personnel record. For example, background investigations of currently employed Police Personnel, due to volume, shall be physically retained as to subset of the individual's official Personnel File with the LRPD. They will be cross referenced by name.
2. The following Category II Personnel Records, to the extent that they exist, shall be maintained at the Department level and shall be considered to be under the custodianship of the Department Director.
  - a. Background investigations of currently-employed LRPD Personnel. Physically maintained within LRPD as a subset of the individual's official Personnel File. Cross-referenced by name, see Category I, subsection (1), t. and Category II, subsection (1) above.
  - b. Interoffice memorandums, informal notes and correspondence on personnel matters
  - c. City Vehicle Accident Reports
  - d. Meeting Notes
  - e. Transfer requests
  - f. Work Schedules
  - g. LRPD Internal Affairs Investigations – open & closed -- Closed files cross-reference to Human Resources, see Category I, subsection (1), t. above.
  - h. EPAS I and EPAS II evaluations and all critical incidents documentation or other documents maintained by individual supervisors for the purpose of documenting/supporting EPAS Performance Evaluations.
  - i. Training Records and Completion Certificates
  - j. Fingerprint Records

Category III: Information/documents accessible by employees to be maintained in the Finance Department. To the extent that they exist, the following Category III Personnel Records shall be maintained by the Finance Department and shall be considered to be under the custodianship of the Finance Department Director.

- a. Travel Forms Related to Reimbursement Payments
- b. Tax Withholding Authorizations (i.e., W-4's and W-9's)
- c. Attendance Records/Time Sheets
- d. Overtime Request Memorandums

Category IV: Miscellaneous Personnel Records and records repositories.

1. The City Attorney's Office shall maintain all files concerning civil summons and complaints filed against employees raising claims against them for performance of their official governmental duties.
2. The City Clerk shall maintain the Oath of Office Files.

B. General Procedures: FOI Requests for Personnel Records

1. All FOI Requests for Personnel Records should be forwarded to the custodian of the records sought within one (1)-hour of the receipt of same. In the event there is any questions as to who is the custodian of the records sought, the request should be forwarded immediately to both the Human Resources and the Director of the Department involved.
2. Discoverability: Personnel Records are generally subject to disclosure. There are; however, certain very important exceptions to the general rules of Discoverability. They are as follows: a) medical records and scholastic records are never subject to public inspection; b) employee evaluation or job performance records, including preliminary notes and other related materials, are subject to disclosure only upon final administrative resolution of any suspension or termination proceeding at which such records form a basis of the decision to suspend or terminate the employee, and it there is a compelling public interest in their disclosure; and, finally c) personnel records in general are not subject to public inspection to the extent that their disclosure would constitute a clearly unwarranted invasion of the employee's (or employees') personal privacy. Employee evaluation or job performance records are subject to public inspection only when they result in a suspension or termination ultimately upheld in the City's Administrative Disciplinary Appeal Process.
3. If the custodian – either the Human Resources Director or the Department Director maintaining the particular Personnel Record

sought – has any questions as the Discoverability of a particular Personnel Records he/she should contact the City Attorney for assistance. Ultimate responsibility for determining whether a particular Personnel Record is Discoverable, i.e., whether release of a particular Personnel Records would constitute an unwarranted invasion of an employee's personal privacy, shall rest with the City Manager.

4. Within twenty-four (24) hours from receipt of an FOI Request for a Personnel Record, the custodian must do two (2) things: 1) he/she must determine whether the record sought is exempt from disclosure and notify the individual making the request of that decision; and 2) he/she must notify the subject, or subjects (employees), of the request and the decision as to whether or not the record is exempt from disclosure. If the subject of the record cannot be contacted by telephone or in person within the twenty-four (24)-hour period, the custodian shall send written notice via overnight mail to the subject at his/her last know address.

In the notice to the affected employee, the custodian should also advise that the employee has the right to seek an opinion of the Arkansas Attorney General as to the Discoverability of the Personnel Records sought. The Attorney General will then have three (3) working days in which to issue an opinion. Should the employee elect to exercise this option, the custodian shall not release the Personnel Record being sought pending issuance of the Attorney General's opinion.

The City also has the option of seeking an Attorney General's pinion as to the Discoverability of the Personnel Records sought.

C. Non Personal Public Records:

1. Each Department Director is for all purposes the custodian of all non-personnel public records maintained in and by his Department. All FOI Requests for Public Records should, within one (1)-hour of the receipt, be forwarded to the Department Director wherein the records are maintained. If for any reason the Department Director is unavailable, then, in that event, the request should be immediately forwarded to the Department Director's designee for handling FOI Matters. Finally, if the Department Director's designee is also unavailable, the request should be immediately forwarded to the City Manager's Office.
2. Almost all documents maintained in and by a Department of the City will be Public Records within the meaning of the Freedom of Information Act and the above definition. Any question as to whether a particular document or other Public Record is Discoverable under the Act should be directed immediately to the City Attorney.

3. Discoverability: Public records are generally subject to disclosure. There are; however, certain very important exceptions to the general rule of Discoverability. They are as follows: a) documents protected by order or rule of a court are not subject to public inspection; b) records which if disclosed, would give advantage to competitors or bidders are not subject to public inspection; and c) undisclosed investigations by law enforcement agencies of suspected criminal activity are never subject to public inspection.
4. If a Department Director has any questions as to the Discoverability of any Public Record, he should immediately contact the City Attorney for assistance.
5. Once the Department Director determines that the requested information is, in fact, a Public Record and subject to disclosure, the Freedom of Information Act anticipates that the record shall be open to inspection and copy by the requestor during the regular business hours of the Department. The Department Director shall insure that the requestor is provided reasonable comforts and facilities for inspection of the record.
6. If a clearly Discoverable Record is available at the time the requestor asks to examine it, it shall be immediately provided for inspection. If the record is in active use or storage and, hence not available at the time of the request, the Department Director shall certify this fact in writing to the requestor and set a date and hour within three (3) working days at which the record shall be made available for inspection.

D. General Procedures for all FOI Requests:

1. Any official receiving an FOI Request shall ask the requestor to reduce his request to writing. The writing should state specifically the name, address and phone number of the requestor, state the exact date and time of the request and describe with particularity the record, or records, sought. This is; however, not an absolute requirement. No FOI Request shall be denied simply because the requestor refuses to reduce his request to writing.
2. In every instance, whether or not the requestor reduces his request to writing, the official initially receiving the FOI Request and if they are not one and the same, the official making the determination as to the Discoverability and actually providing the record for inspection shall complete all applicable items on the document appended to this Procedure Guideline as Appendix A. The official actually receiving the FOI Request shall describe with particularity the record sought.
3. If the requestor asks for copies of a Discoverable Public Record (personnel or non-personnel). The charge for such copies shall be eleven cents (11¢) per page. In addition, the City shall require the requestor to defray all actual out-of-pocket expenses incurred in reproducing any photograph. Specific fees for reproducing films,

tapes or other forms of data compilations shall be determined on a case-by-case basis. This fee should be paid to the Collector prior to receipt of the copies or other records. The Collector's receipt shall be attached to the request form, see Appendix A, and transmitted, along with the form, to the City Attorney.

4. If at any time, the Human Resources Department Director or a Department Director has any questions regarding any particular phase of the FOI Request process, he/she should immediately contact the City Attorney for assistance.

Approved:



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Bruce T. Moore  
City Manager