

Chapter 95

RECORDS

[HISTORY: Adopted by the Town Board of the Town of Port Washington 7-10-1995 by Ord. No. 95-1. Amendments noted where applicable.]

§ 95-1. Definitions.

As used in this chapter, the following terms shall have the meaning indicated:

LEGAL CUSTODIAN — That officer, committee head, or employee of the Town designated under § 95-2 or otherwise responsible by law to keep and preserve any Town records or file records in his or her office or who is lawfully in possession or entitled to possession of such public records and who is required by this chapter to respond to requests for access to such records.

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), computer printouts and optical disks. "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.¹

§ 95-2. Legal custodians.

- A. Unless otherwise prohibited by law, the Town Clerk shall act as the legal custodian for the Town Board and for any committees, commissions, boards or other authorities created by ordinance or resolution of the Town Board.
- B. The chief administrative officer of every Town department or operational unit, whether elected or appointed, and including but not limited to the Building Inspector, is the legal custodian of his or her records and the records of his or her office.
- C. The Deputy Town Clerk will act as the legal custodian in the absence, illness or disability of the Town Clerk.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 95-3. Public access to records.

- A. Except as provided in § 95-5, any person has a right to inspect a record and to make or receive a copy of any record as provided by § 19.35(1), Wis. Stats.
- B. Records will be available for inspection and copying upon at least 48 hours' advance notice of intent to inspect or copy.
- C. A requester shall be permitted to use facilities comparable to those available to Town employees to inspect, copy or abstract a record.
- D. The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner of access to records.
- E. A requester shall be charged a fee to defray the cost of copying records as follows:
 - (1) The cost of photocopying shall be set by the Town Board. Such cost shall be calculated not to exceed the actual, necessary and direct cost of reproduction.²
 - (2) If the form of a written record does not permit photocopying, the actual and necessary cost of photographing and photographic processing, or of copying computer printouts or audiotapes, shall be charged.
 - (3) If mailing or shipping is necessary, the actual cost of shipping shall be charged.
 - (4) There shall be no charge for locating records unless the actual cost thereof exceeds \$50, in which case the cost shall be estimated by the legal custodian and collected in advance from the requester.
 - (5) The legal custodian shall have discretion to construe a series, scheme or pattern of requests for records made in the form of individual requests as only one request for the purposes of calculating locating costs. Multiple requests for records may be treated as a singular request provided that the legal custodian can reasonably demonstrate a substantial degree of similarity among the requests with respect to subject matter, timing of the requests, continuity of the requests, source of the request, and focus of the requests.
 - (6) The legal custodian shall estimate the cost of all applicable fees and may require a cash deposit adequate to assure payment, if such estimate exceeds \$5.
 - (7) Elected and appointed officials of the Town shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.
- F. Pursuant to § 19.34, Wis. Stats., there shall be posted in the Town Hall and in the offices of all other departments or operational units a notice which shall list the following:

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) The name of the legal custodian and the deputy legal custodian.
- (2) A listing of inspection hours:
 - (a) If the office maintains regular business hours, a listing of those hours.
 - (b) If the office does not maintain regular business hours, notice that access to records will be permitted upon at least 48 hours' written notice or oral notice of intent to inspect or copy a record.
- (3) A fee schedule for copies of records.

§ 95-4. Access procedures.

- A. A request to inspect or copy a record shall be made to the legal custodian or deputy legal custodian. A request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request.
- B. A requester may be required to show acceptable identification whenever security reasons or federal law or regulations so require.
- C. A request for a record may be denied as provided in § 95-5. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons for denying the request is made by the requester within five business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request.
- D. Every written denial of a request shall inform the requester that if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under § 19.37(1), Wis. Stats., or upon application to the Attorney General or a district attorney.

§ 95-5. Limitations on right to access.

- A. As provided by § 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, although the material used as input for a computer program or the material produced as a product of the computer program is subject to inspection.
 - (4) A record or any portion of a record containing information qualifying as a common law trade secret.

- B. In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after consultation with legal counsel, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, the following:
- (1) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.
 - (2) Records of current deliberations after a quasi-judicial hearing.
 - (3) Records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance or discipline of any Town officer or employee, or the investigation of charges against a Town officer or employee, unless such officer or employee consents to such disclosure.
 - (4) Records concerning current strategy for crime detection or prevention.
 - (5) Records of current deliberations or negotiations on the purchase of Town property, investing of Town funds or other Town business whenever competitive or bargaining reasons require nondisclosure.
 - (6) Financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such history.
 - (7) Communications between legal counsel for the Town and any officer, agent or employee of the Town when advice is being rendered concerning strategy with respect to current litigation in which the Town or any of its officers, agents or employees is, or is likely to become, involved or communications which are privileged under § 905.03, Wis. Stats.
- C. If a record contains information that may be made public and information which may not be made public, the custodian of the record shall provide the information that may be made public, deleting that information which may not be made public from the record. If in the judgment of the legal custodian there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.
- D. Whenever the Assessor, in the performance of the Assessor's duties, requests or obtains income and expense information pursuant to § 70.47(7)(af), Wis. Stats., or any successor statute thereto, then such income and expense information that is provided to the Assessor shall be held by the Assessor on a confidential basis; except, however, that the information may be revealed to and used by persons in the discharge of duties imposed by law; in the discharge of duties imposed by office (including but not limited to use by the Assessor in performance of official duties of the Assessor's office and use by the Board of Review in performance of its official

duties); or pursuant to order of a court. Income and expense information provided to the Assessor under § 70.47(7)(af), Wis. Stats., unless a court determines that it is inaccurate, is, per § 70.47(7)(af), not subject to the right of inspection and copying under § 19.35(1), Wis. Stats.³

3. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).