

**CITY OF FARMERSVILLE
ORDINANCE #2015-1013-002**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF FARMERSVILLE, TEXAS, AS HERETOFORE AMENDED THROUGH THE AMENDMENT OF CHAPTER 2, "ADMINISTRATION," BY CREATING A NEW ARTICLE IX ENTITLED "PUBLIC INFORMATION REQUESTS" THAT AUTHORIZES THE PUBLIC INFORMATION OFFICER TO ESTABLISH REGULATIONS FOR SUBMITTING, RECEIVING, AND PROCESSING REQUESTS FOR PUBLIC INFORMATION (OPEN RECORDS); REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Farmersville, Texas ("City Council"), pursuant to Texas Local Government Code, Sections 51.001 and 51.012, is authorized to adopt an ordinance, not inconsistent with state law, that is for the good government, interest, welfare, peace, or order of the City of Farmersville ("City"), and that is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City is a governmental body subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code; and

WHEREAS, the Texas Public Information Act mandates the disclosure of some information, and authorizes a governmental body to withhold other information; and

WHEREAS, the Public Information Act imposes civil and criminal penalties for the failure to disclose information that is open, and for the unlawful disclosure of information that is confidential; and

WHEREAS, the City is a small organization with limited resources, thus necessitating the efficient operation of City business; and

WHEREAS, section 552.230 the Public Information Act grants the City authority to adopt reasonable rules of procedure under which public information may be inspected and copied efficiently, safely, and without delay; and

WHEREAS, the City Council finds that the following rules of procedure are reasonable and justified, and shall further the public interest in the effective and efficient management of public information.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERSVILLE, TEXAS, THAT:

SECTION 1: INCORPORATION OF FINDINGS

The findings set forth above are found to be true and correct and are hereby incorporated into the body of this Ordinance and made a part hereof for all purposes as if fully set forth herein.

SECTION 2: AMENDMENT OF CHAPTER 2, "ADMINISTRATION," BY CREATING A NEW ARTICLE IX ENTITLED "PUBLIC INFORMATION REQUESTS" THAT AUTHORIZES THE PUBLIC INFORMATION OFFICER TO ESTABLISH REGULATIONS FOR SUBMITTING, RECEIVING, AND PROCESSING REQUESTS FOR PUBLIC INFORMATION (OPEN RECORDS)

From and after the effective date of this Ordinance Chapter 2, "Administration," of the Code of Ordinances of the City of Farmersville, Texas, ("Farmersville Code") is hereby amended by adopting a new Article IX entitled "Public Information Act Requests" to be and read as follows:

"ARTICLE IX. PUBLIC INFORMATION REQUESTS

Sec. 2.451. Purpose.

This Chapter provides standards for processing requests for public information pursuant to the Public Information Act, Texas Government Code Chapter 552. This policy provides uniform procedures and guidelines when a City official or employee receives a request for information to ensure that such individuals respond to a request for information in a prompt, professional and efficient manner. The objectives of this Ordinance are to:

- (a) Promote and increase efficiency, responsiveness to the public, and economy in the operation of City government; and
- (b) Provide a fair and equal opportunity for obtaining access to information; and
- (c) Reduce duplication of effort and increase the efficiency with which requests are handled; and
- (d) Demonstrate the City's commitment to an informed citizenry to further the public's control over the instruments they have created.

Sec. 2.452. Scope.

This Chapter applies to all data, documents, forms, and information managed or possessed by the City or to which the City has a superior

right of access. This Chapter applies to all requests for information submitted to the City after the date of enactment.

Sec. 2.453. Public Information Officer.

- (A) The City Secretary shall serve as the Public Information Officer for the City.
- (B) In addition to other duties assigned, the Public Information Officer shall:
 - (1) Administer the open records program and provide assistance to department heads in its implementation; and
 - (2) Plan, formulate and prescribe records disposition policies, systems, standards and procedures.

Sec. 2.454. Conflicts.

This Chapter is a guide for City employees and officers. It should in no way be construed as modifying state laws regarding disclosure of public information or the retention of local government records. This Chapter is to be read in harmony with such other City policies and state statutes when possible so as to give effect to the stated purpose of this Chapter.

Sec. 2.455. Requests For Confidential Information.

The Public Information Officer shall consult with the City Attorney, or his or her designee, regarding requested information that may contain privileged, confidential, or exempted information.

Sec. 2.456. Uniformity.

All requests for information are to be treated uniformly without regard to the requestor's identity, motives, or method of submission so long as the request is in writing.

Sec. 2.457. Full Cost Recovery.

To the extent possible, the City must recover the costs of responding to requests for information. Therefore, all requests for information are subject to reasonable charges that include the costs related to reproducing information such as the costs of materials, labor and overhead, as allowed by law. Charges for providing requested information accrue at the time the requestor is advised that the copy is available upon payment of the applicable charges. The Public Information Officer shall impose charges to

inspect or copy requested information in accordance with the guidelines established by the Office of the Attorney General of Texas, when applicable. Exceptions can be made in those rare and unusual situations in which the City Secretary determines that waiving charges is in the public interest. A waiver to payment of the applicable charges can be made only in instances where the Public Information Officer determines that doing so is in the public interest.

Sec. 2.458. Prohibitions.

- (A) Unauthorized Access. It shall be unlawful for any person other than a City officer, official or employee to open City filing cabinets, drawers, binders, or file storage boxes at City Hall without the express permission of the City Manager or the Public Information Officer.
- (B) Unauthorized Removal. It shall be unlawful for any person other than a City officer or employee to remove documents, forms, files, information or data from City Hall without the express permission of the City Manager or the Public Information Officer.
- (C) Unauthorized Destruction. It shall be unlawful for any person other than a City officer or employee to destroy, deface, obscure, tear, shred, or dispose of documents, forms, files, information or data from City Hall without the express permission of the City Manager or the Public Information Officer.
- (D) Unauthorized Disclosure. It shall be unlawful for any person to disclose to the public any confidential documents, forms, files, information or data from City Hall without the express permission of the City Manager or the Public Information Officer.

Sec. 2.459. Enforcement.

- (A) Dissemination. All employees and officers of the City shall be informed of the existence of the policies and procedures adopted pursuant to this ordinance. All City departments shall keep copies available for reference by employees and officers. Failure to reasonably comply with this policy shall be grounds for employee discipline up to and including termination.
- (B) Civil & Criminal Penalties. The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as

prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

- (C) Criminal Prosecution. Any person knowingly violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00) per violation. An offense under this Ordinance is a Class C misdemeanor.

- (D) Civil Remedies. Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:
 - (1) Injunctive relief to prevent specific conduct that violates this Ordinance or to require specific conduct that is necessary for compliance with this Ordinance; and

 - (2) In addition to any other remedies available hereunder, a civil penalty of up to one hundred dollars (\$100.00) per day or portion of a day shall be assessed when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and

 - (3) Any other relief or processes now or hereafter available."

SECTION 3: CITY OF FARMERSVILLE PUBLIC INFORMATION POLICIES AND PROCEDURES ADOPTED

The City Council of the City of Farmersville, Texas does hereby adopt the City of Farmersville Public Information Policies and Procedures and any attachments thereto, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference for all purposes allowed by law. The Public Information Officer is hereby authorized and directed to make copies of the attached Public Information Policies and Procedures, or otherwise make it available for City employees and the public.

SECTION 4: REPEALER

This Ordinance shall be cumulative of all other Ordinances, resolutions, and/or policies of the City, whether written or otherwise, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Any and all Ordinances, resolutions, and/or policies of the City, whether written or otherwise, which are in any manner in conflict with or inconsistent with this Ordinance shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

SECTION 5: SEVERABILITY

It is hereby declared to be the intent of the City Council that the several provisions of this Ordinance are severable. In the event that any court of competent jurisdiction shall judge any provisions of this Ordinance to be illegal, invalid, or unenforceable, such judgment shall not affect any other provisions of this Ordinance which are not specifically designated as being illegal, invalid, or unenforceable.

SECTION 6: PENALTIES FOR VIOLATION

Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Five Hundred Dollars (\$500.00) per violation. The penal provisions imposed under this Ordinance shall not preclude the City of Farmersville from filing suit to enjoin the violation. The City of Farmersville retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 7: INJUNCTIVE RELIEF

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Farmersville in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Farmersville.

SECTION 8: PUBLICATION

The City Secretary is hereby directed to publish in the Official Newspaper of the City of Farmersville the Caption, Penalty, and Effective Date Clause of this Ordinance as required by Section 52.011 of the Local Government Code.

SECTION 9: ENGROSSMENT AND ENROLLMENT

The City Secretary of the City of Farmersville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date Clause in the minutes of the City Council of the City of Farmersville, and by filing this Ordinance in the Ordinance records of the City.

SECTION 10: SAVINGS

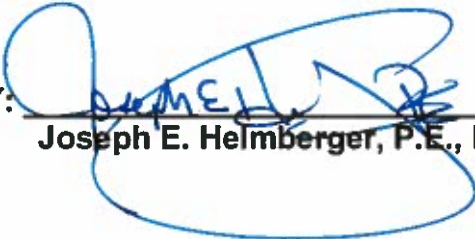
All rights and remedies of the City of Farmersville are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 11: EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as required by law.

PASSED on first reading on the 22nd day of September, 2015, and second reading on the 13th day of October, 2015 at properly scheduled meetings of the City Council of the City of Farmersville, Texas, there being a quorum present, and approved by the Mayor on the date set out below.

APPROVED THIS 13th DAY OF OCTOBER, 2015.

BY: 
Joseph E. Helmberger, P.E., Mayor

ATTEST:

BY: 
Edie Sims, City Secretary



Exhibit A

City of Farmersville Public Information Policies and Procedures

I. POLICY

A. Purpose

The City of Farmersville, Texas (the "City") is committed to full and complete compliance with the letter and the spirit of the Texas Public Information Act (the "Act") and to public policy of the state of Texas that "all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them." It is City policy that all officers, officials and employees comply with the provisions of the Act.

These policies and procedures ("policy") outline the requirements for requesting, processing, disclosing and withholding City records. This policy is a guide for conducting City business in a professional and uniform manner. This policy is designed to assist in bringing to the City operations an understanding, cooperation and efficiency in handling requests for information through the application of uniform procedures.

The objectives of this policy are to:

- Promote and increase efficiency, responsiveness to the public, and economy in the operation of City government; and
- Provide a fair and equal opportunity for obtaining access to information; and
- Reduce duplication of effort and increase the efficiency with which requests are handled.
- Demonstrate the City's commitment to an informed citizenry to further the public's control over the instruments they have created.

B. Scope

This policy applies to all data, documents, forms, and information managed or possessed by the City, or to which the City has a superior right of access. This policy applies to all requests for information submitted to the City after the date of adoption. The Act does not require the City to create new information, to do legal research, or to answer questions. A *subpoena duces tecum* or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under the Act and is not subject to this procedure. The municipal court is exempt from the requirement of the Act, and is therefore exempt from the requirements of this policy. A request for documents pursuant to an administrative hearing is considered to be a request for information under the Act.

II. PUBLIC INFORMATION OFFICER; AUTHORITIES & DUTIES

The City Secretary shall be the City's "Public Information Officer" and has the authority to release records in accordance with the procedures set forth in the Act and with this policy. The Public Information Officer shall make information available for public inspection and copying; carefully protect information from deterioration, alteration, mutilation, loss, or unlawful removal; and repair, renovate, or rebind information as necessary to maintain it properly.

It is the duty of the Public Information Officer to "promptly" produce requested records for inspection or duplication, or both. If the Public Information Officer cannot produce the information within 10 business days, after receipt of a written request, the requestor must be notified in writing of this fact and be provided with a date and hour within a reasonable time when the information will be available.

The Public Information Officer may not inquire into the purpose for which the information will be used or make other inquiry of a requestor except to establish proper identification or authority, or as follows:

- if information requested is unclear, the requestor may be asked to clarify the request; and
- if a large amount of information has been requested, the requestor may be asked how the scope of the request might be narrowed.

The Public Information Officer shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media. The Act provides that the City is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

III. PROCEDURES

A. Signage Required

The Public Information Officer shall prominently display a sign in the form prescribed by the Texas Building and Procurement Commission (formerly named the General Services Commission) that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information where it is plainly visible to:

- members of the public who request public information in person; and
- employees whose duties include receiving or responding to public information requests.

B. Receiving Requests for Information

1. Written Requests. All requests for information must be received in writing via email, regular mail, hand-delivery, or facsimile. Written requests do not include a text message sent to an individual official, officer, employee or the Public Information Officer. All requests for information must be directed to the Public Information Officer as follows:

The City of Farmersville
Office of the City Secretary
205 South Main Street
Farmersville, Texas 75442
Fax: (972) 782-6604
E-mail: e.sims@farmersvilletx.com

2. Forwarding of Requests. Any official or other employee receiving a written request for information via regular mail or hand-delivery must forward it immediately to the Public Information Officer.

3. Email and Facsimile Requests. Email and facsimile requests are not valid unless sent directly by the requestor to the Public Information Officer.

4. Date Stamp. An official stamp shall be designated by the Public Information Officer. Any employee or officer receiving a request for information must immediately make a notation on the document as to the date it was received.

5. Submission to the Public Information Officer. Individuals contacting the City with written or verbal inquiries regarding information held by the City should be advised to submit their requests in writing directly to the Public Information Officer.

6. Requests for Clarification. All requests for clarification, narrowing or additional information, must be made in writing and may be sent via email or by certified mail, return receipt requested, to the requestor's physical or mailing address as allowed by Texas law. The communication must state that all responses to the inquiry must also be made in writing and returned to the City by mail, email, or via facsimile transmission and that failure to respond in a timely manner may result in the request being considered withdrawn. If the Public Information Officer does not receive a written response from the requestor by the 61st day after the date the written request for clarification, narrowing or additional information is sent, the request for information is considered to have been withdrawn by the requestor.

7. Outstanding Balance Due. The City must require the payment of all outstanding balances due from a requestor for previous information requests that were prepared by the City, and for which the requestor was notified yet failed to pay the assessed charges. The City is not obligated to process new requests for information until the outstanding balances have been paid-in-full.

C. Responding to Routine Requests for Information

1. Compliance. When it is clear from the request that requested information is not excepted from required disclosure, the Public Information Officer should respond or coordinate responses to the request, notifying the City Manager as appropriate. The Public Information Officer should promptly produce requested information for inspection, duplication, or both, on application by any person. The Public Information Officer shall comply with routine requests by:

- (a) providing the requested information for inspection or duplication in City offices; or
- (b) sending copies of the requested information via regular mail if the person requesting the information requests that copies be provided by mail and pays the postage and any other allowable charges that the requestor has caused the City to incur.

2. Charges. To the extent possible, the City must recover the costs of responding to requests for information. Therefore, all requests for information are subject to reasonable charges that include the costs related to reproducing information such as the costs of materials, labor and overhead, as allowed by law. Charges for providing requested information accrue at the time the requestor is advised that the copy is available upon payment of the applicable charges. The Public Information Officer shall impose charges to inspect or copy requested information in accordance with the costs set forth in 1 Tex. Admin. Code §70.3 (Office of the Attorney General), as such rule may be amended. A summary of the charges is provided in **Attachment 1** hereto. In the event of any conflict between the charges set out in Attachment 1 and 1 Tex. Admin. Code §70.3, the provisions of 1 Tex. Admin. Code §70.3 shall control. If a request for information will result in the imposition of a charge that exceeds \$40, the Public Information Officer shall ensure that the requestor receives a written itemized statement that details all estimated charges that will be imposed. A waiver to payment of the applicable charges can be made only in instances where the Public Information Officer determines that doing so is in the public interest.

3. Information in Active Use or in Storage. If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the Public Information Officer shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

4. Request for Additional Time. If the requested information cannot be produced for inspection or duplication within ten (10) business days after the date the information is requested, the Public Information Officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

5. Time Limitations. A requestor must complete the inspection of the requested information not later than the 10th business day after the date the information is made available for inspection or duplication. If the requestor does not complete the inspection of the requested information within ten (10) business days after the date the requested information is made available and does not file a written request for additional time, the requestor is considered to have withdrawn the request. The Public Information Officer shall extend the initial examination period by an additional ten (10) business days if, within the initial period, the requestor files a written request for additional time.

D. Responding to Non-Routine Requests for Information

1. Consultation for Disclosure Exceptions. When it is not clear whether requested information is excepted from required disclosure by the Act, the Public Information Officer shall consult with the Office of the City Attorney to determine whether the records in question should be withheld or released.

2. Attorney General Decisions. Subchapter C of the Act excepts a number of categories of information from required disclosure. On determination by the Office of the City Attorney that requested information falls within one of these excepted categories, the Office of the City Attorney shall forward a request for a decision to the Attorney General to confirm that such information shall be withheld from public disclosure. On determination by the Office of the City Attorney that requested information does not fall within one of the excepted categories, the request shall be processed following procedures specified above for a routine request.

E. Estimate or Statement of Charges

1. Written Itemized Statement. If fulfilling any type of request for information would cost the requestor an amount exceeding \$40, the City must provide the requestor with a written itemized cost estimate that details all estimated charges to be imposed, including any allowable charges for personnel costs. If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the City regarding narrowing the scope of the request or clarifying the request, or the City should provide the Internet site. The itemized cost estimate to the requestor must state:

- (a) that the requestor must provide the City with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;
- (b) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required; and

- (c) that the requestor may respond to the statement by delivering the written response to the City by mail, in person, by facsimile transmission, or by email.

2. Withdrawal of Request. A request is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the City within 10 business days after the date the statement is sent to the requestor that:

- (a) the requestor will accept the estimated charges;
- (b) the requestor is modifying the request in response to the itemized statement; or
- (c) the requestor has filed a complaint with the Office of the Attorney General.

3. Updated Itemized Statement. If the City later determines, but before it makes the copy or the paper record available, that the estimated charges will exceed the charges detailed in the written itemized statement by twenty percent (20%) or more, the City must send to the requestor a written updated itemized statement that details all estimated charges that will be imposed, including any allowable charges for personnel time. If the requestor does not respond in writing to the updated estimate in the time and manner described, the request is considered to have been withdrawn by the requestor.

If the actual charges that the City imposes for a copy of information or for inspecting paper records exceeds \$40, the charges may not exceed the amount estimated in the updated itemized statement or, if no such updated statement was sent, the amount charged cannot exceed twenty percent (20%) of the amount listed in the latest estimate provided to the requestor. If no itemized statement is sent to the requestor, the City may not charge over \$40 to fulfill the request.

F. Responding to Requests for Information in a Requested Medium

1. Electronic or Magnetic Medium. If information exists in an electronic or magnetic medium, the requestor may request a copy of the information either on paper or in an electronic medium, such as on diskette or on magnetic tape. The Public Information Officer shall provide a copy in the requested medium if:

- (a) the City has the technological ability to produce a copy of the requested information in the requested medium;
- (b) the City is not required to purchase any software or hardware to accommodate the request; and
- (c) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the City and a third party.

2. Paper or Other Medium. If the City is unable to comply with the request to produce a copy of information in a requested medium for any of the reasons described above, the City must provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. The City is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

3. Written Statement. The Public Information Officer shall ensure that the requestor is provided with a written notice if the City determines that responding to a request for public information will require programming or manipulation of data, and

- (a) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or
- (b) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

4. Programming/Manipulation of Data Notice. The written notice must include:

- a statement that the information is not available in the requested form;
- a description of the form in which the information is available;
- a description of any contract or services that would be required to provide the information in the requested form;
- a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the guidelines for specifying charges for access to public information; and
- a statement of the anticipated time required to provide the information in the requested form.
- time the requestor is advised that the copy is available only upon payment of the applicable charges.

5. Timing of Written Statement. The Public Information Officer shall ensure that a written notice is provided to the requestor within twenty (20) days after the date of the City's receipt of the request. The City has an additional ten (10) days if written notice is given to the requestor, within twenty (20) days after the date of receipt of the request, that the additional time is needed.

6. Requestor Response. After providing the written notice to the requestor as required above, the City does not have any further obligation to provide the information in the requested form or in the form in which it is available unless within 30 days the requestor informs the City in writing that the requestor:

- (a) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the governmental body agree; or
- (b) wants the information in the form in which it is available.

7. Withdrawal of Request. If a requestor does not make a timely written response as specified above, the requestor is considered to have withdrawn the request for information.

G. Responding to Repetitious or Redundant Requests for Information

1. Certifications. If the Public Information Officer determines that a requestor has made a request for information for which the City has previously furnished copies to the requestor or made copies available to the requestor on payment of applicable charges, the Public Information Officer may respond to the request by certifying to the requestor that copies of all or part of the requested information, as applicable, were previously furnished to the requestor or made available. The certification must include:

- (a) a description of the information for which copies have been previously furnished or made available to the requestor;
- (b) the date that the City received the requestor's original request for that information;
- (c) the date that the City previously furnished copies of or made available copies of the information to the requestor;
- (d) a certification that no subsequent additions, deletions, or corrections have been made to that information; and
- (e) the name, title, and signature of the Public Information Officer or the officer's agent making the certification.

2. Charges. A charge may not be imposed for making and furnishing the certification. Information not furnished in the previous request must be furnished for the new request.

H. Requests Requiring More than 36 Hours of Personnel Time

1. 36 Hour Rule. Each requestor is limited to 36 hours of time per 12-month fiscal year that personnel of the City are required to spend producing public information for inspection and duplication, or providing copies of public information to the requestor, without recovering its costs attributable to that personnel time.

2. Written Statements. Each time the City complies with a request for public information, the City shall provide the requestor with a written statement of the amount of personnel time spent complying with that request and the cumulative amount

of time spent complying with requests for public information from that requestor during the applicable 12-month period. The requestor may not be charged for the amount of time spent preparing the written statement.

3. Written Cost Estimates. If, in connection with a request for public information, the cumulative amount of personnel time spent complying with requests for public information from the same requestor is expected to equal or exceed 36 hours, the City shall provide the requestor with a written estimate of the total cost, including materials, personnel time, and overhead expenses necessary to comply with the request. The written estimate must be provided to the requestor on or before the 10th day after the date on which the public information was requested. If the City determines that additional time is required to prepare the written estimate and provides the requestor with a written statement of that determination, the City must provide the written statement as soon as practicable, but on or before the 10th day after the date the City provided the notice that additional time was required.

4. Calculation of Costs. The costs charged for personnel time relating to the cost of locating, compiling, and producing the public information shall be calculated at the rates set by the Texas Attorney General's Office. A summary of the charges is provided in Attachment 1. In the event of any conflict between the charges set out in Attachment 1 and 1 Tex. Admin. Code §70.3, the provisions of 1 Tex. Admin. Code §70.3 shall control. When calculating the amount of time spent complying with an individual's public information request(s), the City may not include time spent on:

- (a) determining the meaning and/or scope of the request(s);
- (b) requesting a clarification from the requestor;
- (c) comparing records gathered from different sources;
- (d) determining which exceptions to disclosure, if any, may apply to information that is responsive to the request(s);
- (e) preparing the information and/or correspondence required for an Attorney General decision;
- (f) reordering, reorganizing, or in any other way bringing information into compliance with well-established and generally accepted information management practices; or
- (g) providing instruction to, or learning by, employees or agents of the City of new practices, rules, and/or procedures, including the management of electronic records.

5. Payment by Requestor. If the City provides a requestor with a written statement estimating the cost of personnel time to complete the requestor's request, the City is not required to produce public information for inspection or duplication or to provide copies of public information in response to the requestor's request unless on or before the 10th day after the date the written statement was sent, the requestor submits a statement in writing to the governmental body in which the requestor commits to pay the lesser of:

- (a) the actual costs incurred in complying with the requestor's request, including the cost of materials and personnel time and overhead;
- or
- (b) the amount stated in the written statement.

6. Withdrawal of Request. If the requestor fails or refuses to submit a written commitment to pay statement, the requestor is considered to have withdrawn the requestor's pending request for public information.

7. Exceptions to 36 Hour Rule. This rule does not prohibit City from providing a copy of public information without charge or at a reduced rate when it is in the public interest or from waiving a charge for providing a copy of public information when the cost of processing the collection will exceed the amount of the charge. In addition, the 36 hour rule does not apply if the requestor is an individual who, for a substantial portion of the individual's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information for and is seeking the information for:

- (a) a radio or television broadcast station that holds a broadcast license for an assigned frequency issued by the Federal Communications Commission;
- (b) a newspaper that is qualified under Section 2051.044, Texas Government Code to publish legal notices or is a free newspaper of general circulation and that is published at least once a week and available and of interest to the general public in connection with the dissemination of news;
- (c) a newspaper of general circulation that is published on the Internet by a news medium engaged in the business of disseminating news or information to the general public; or
- (d) a magazine that is published at least once a week or on the Internet by a news medium engaged in the business of disseminating news or information to the general public.

8. Additional Exceptions to 36 Hour Rule. Further, the 36 hour rule does not apply if the requestor is:

- (a) an elected official of the United States, Texas, or a political subdivision of Texas; or
- (b) a representative of a publicly funded legal services organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that Code.

Attachment 1

Allowable Charges for Providing Copies of Public Information

The Public Information Act (the "Act") authorizes the City to recover costs for materials, personnel time, and overhead, under certain circumstances. However, in no case may the City impose charges that exceed the actual cost of producing or allowing the inspection of requested information.

A. Charges for Materials

Standard paper copy – The charge for a standard paper copy (8½" x 11") produced by a photocopier or a computer printer is \$.10 per page. Each side that has a copied or printed image is considered a separate page.

Nonstandard copy – The following charges for nonstandard copies cover the cost of materials onto which information is copied:

Diskette	\$1.00 each
Magnetic tape	Actual cost
Data cartridge	Actual cost
Tape cartridge	Actual cost
Rewritable CD (CD-RW)	\$1.00
Non-rewritable CD (CD-R)	\$1.00
Digital Video Disc (DVD)	\$3.00
JAZ Drive	Actual cost
Other Electronic Media	Actual cost
VHS videocassette	\$2.50 each
Audio cassette	\$1.00 each
Oversize paper copy (i.e.: 11" x 17", green bar, blue bar, (not including maps and photographs using specialty paper)	\$.50 each
Specialty paper (Mylar, blueprint, blueline, map, photographic)	Actual cost
Other	Actual cost

These charges are for materials only, and do not reflect any additional costs that the City may impose for personnel time, overhead (if applicable), document retrieval, programming personnel time or computer resource usage.

B. Charges for Personnel Time

Personnel charges – There are two types of labor costs authorized under the Act – standard personnel time and programming personnel time. The most common type of labor cost is for standard personnel time. The charge for standard personnel time to process a request for information is \$15 per hour, prorated to the nearest quarter-hour.

- The requestor may only be charged for locating, compiling, and redacting any information confidential by law. The requestor may not be charged for the preparation of the cost statement, drafting memoranda, drafting cover letters, or for any other information he or she did not request.
- The charge for standard personnel time can not include any time spent by an attorney, legal assistant, or any other person who reviews the requested information to determine whether the City will raise any exceptions to disclosure of the requested information under the Act or to research or prepare a request for a ruling by the Attorney General's office pursuant to the Act.

Before the City can recover costs exceeding forty dollars (\$40), the City must provide the requestor with an itemized written cost statement that includes language required by the Act. The requirements of cost estimates are detailed in the section entitled "Estimate or Statement of Charges."

Personnel Charges When Photocopies are Requested – A personnel charge may not be collected to provide 50 or fewer pages of paper copies for a request for information unless the requested documents are (1) older than five years or (2) located in more than one building or in a remote storage facility. City buildings that are connected by sidewalks or covered walkways, an elevated or underground passageway are considered to be one building. When paper copies are requested and personnel charges are imposed, the fee should be calculated as follows:

- If 50 or more pages of paper copies are requested, the personnel charge may include the actual time to locate, compile, and reproduce the requested information and can be assessed for either standard or non-standard copies.
- If 50 or more pages of paper copies are requested and the documents include both confidential information and public information on the same page, personnel time can be charged for the time spent to blackout, or otherwise redact information that is confidential by law, in addition to the time it takes to locate, compile, and reproduce the requested information.

Personnel Charges When Requests Require Copies from Electronic or Microfilm Records: Charges for copies of records that are stored electronically or on microfilm may include reasonable costs of materials, standard personnel time, and overhead if 50 or more pages of paper copies are provided.

Personnel Charges for Inspection of Paper Copies: Charges for the inspection of records in paper format may include materials and personnel time under certain circumstances. The City may impose charges for copies for any page that must be copied so that confidential information may be redacted to enable the requestor to inspect the information subject to release. Personnel charges are only allowed if: (1)(a) the records to be inspected are older than five years, or (b) the records completely fill, or when

assembled will completely fill, six or more archival boxes, *and* (2) the governmental body estimates it will require more than five hours to prepare the records for inspection. An "archival box" is a box that measures approximately 12.5" W x 15.5" L x 10" H. On average, such a box would contain 4,000 pages. Only records responsive to the request may be counted towards the number of boxes. Preparing records for inspection includes the time needed to locate and compile the records, redact the confidential information, and make copies of pages that require redaction. Overhead charges are not allowed on requests for inspection of paper records.

Personnel Charges for Inspection of Information in Electronic Format – When a requestor seeks to inspect information that exists in an electronic medium the City may charge the requestor to access the information if complying with the request will require programming or manipulation of data.

- Manipulation of Data personnel charges - If a request for information requires the creation of a report, table, or chart not currently in existence, and no programming is required, the standard personnel charge of \$15 per hour, prorated to the nearest quarter-hour, for basic data entry may be imposed. When programming or data entry is required in response to a request, the standard personnel charge is allowed, regardless of the number of pages requested.
- Programming personnel charges – If a request requires the services of a programmer to execute an existing program or to create a new program so that requested information may be accessed and copied, the City will charge for the programmer's time. Searching and/or printing electronic records is neither programming nor manipulation of data. The hourly charge for a programmer is \$28.50 an hour, prorated to the nearest quarter-hour. When programming or data entry is required in response to a request, the programming personnel charge is allowed, regardless of the number of pages requested.

If the City assesses a charge for labor, the requestor may require the City to provide him or her with a statement of the amount of time that was needed to prepare the requested copies. Upon request, the statement must be signed by the Public Information Officer or the agent of that officer with the signer's name clearly typed below the signature. The City is not permitted to charge for providing this statement.

C. Miscellaneous Charges

Overhead charge – When a personnel charge is applicable to a request, the City can include direct and indirect costs in the charges. This overhead charge is 20% for any personnel time associated with a request. An overhead charge may not be imposed for requests for copies of 50 pages or less of standard paper records unless the information must be retrieved from more than one building or a remote storage facility. Buildings that are connected by sidewalks or covered walkways, an elevated or underground passageway are considered to be one building. An overhead charge may not be imposed for requests for the inspection of electronic information unless the manipulation of data or programming is required.

Miscellaneous supplies - The City may charge the requestor for the actual cost of miscellaneous supplies. This miscellaneous charge would apply to such items as: envelopes, labels, boxes and other supplies used to produce the requested information. For requests for 50 or more pages of paper copies, or for those requests where the information is located in more than one building or in a remote site, the actual cost of materials may be charged. All City buildings that are connected by sidewalks or covered walkways, an elevated or underground passageway, or similar facility are considered to be one building.

Postal and shipping charges	Actual cost
Photographs	Actual cost
Maps	Actual cost
Outsourced/contracted services	Actual cost for the copy (may not include development costs)
Fax charges	Program staff may assess a fee for the actual cost, if known, for faxing information long distance if the requestor specifically asked that the information be faxed. If the actual cost is not known or if the fax is transmitted locally, no charge for faxing can be assessed.

Microfiche and microfilm charge – If the requestor requires information found only on microform format and they want a duplicate of the microform, the City cannot impose a charge that exceeds the actual cost for reproducing the microform. If the requestor wants the information found on the microform to be reproduced on standard size paper, the charge is \$.10 per page, plus any applicable personnel and overhead charge if the requested information exceeds 50 copies.

Remote document retrieval charge – If the requested information is stored in a remote storage facility and the facility charges the City for retrieval of the document(s), the City may recover actual costs of such services. If this charge is assessed, the City cannot impose an additional personnel charge for time spent locating documents at the storage location by the storage facility’s personnel. If after delivery to the City, the boxes must still be searched for records that are responsive to the request, the City may impose a personnel charge.

Computer resource charge – This is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities. These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to information

requests.

The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. This time can be read directly from the CPU clock, and will most frequently be a matter of seconds. No charge should be made for computer print-out time.

The applicable rates are as follows:

Mainframe system	\$10.00 per cpu minute
Mid-size	\$1.50 per cpu minute
Client/server	\$2.20 per clock hour
PC or LAN	\$1.00 per clock hour

The public must have access to information maintained on superseded software and computer equipment. The City must maintain such software and equipment and documentation on the use of the software and equipment for the full retention period as indicated on the City's approved retention schedule, or the City must maintain the same information in a converted updated version to enable the public to be able to access and read it. However, the City is not required to convert data in one format to another format it has never maintained unless the requestor is notified and pays the cost in advance in accordance with the Section 552.231 of the Act. The City is not required to maintain hardware or software it no longer uses after the data has been converted.

Sales tax – Sales tax may not be added on charges for information.

Deposit/Bond – A cash deposit (50% of the total estimated charge) or bond (100% of the total estimated charge) may be required before the City prepares for inspection the information requested if the total estimated charge will exceed \$100. If the requestor has previous unpaid billings for information exceeding \$100, a deposit of the amount of the unpaid billings will be required.