

CITY OF FRANKLIN, OHIO  
ORDINANCE 2021-01

**REPEALING AND REPLACING THE CODIFIED ORDINANCES OF  
THE CITY OF FRANKLIN, OHIO, TITLE ONE, CHAPTER 105,  
AS AMENDED, TO PROVIDE PUBLIC RECORDS POLICY**

WHEREAS, Title One, Chapter 105, of the City of Franklin’s Codified Ordinances defines and regulates the policy governing production, retention and disposal of records of the City in accordance with Ohio Revised Code Chapter 149; and

WHEREAS, Council desires to establish updated procedures and responsibilities, as applicable under Ohio Revised Code Chapter 149 because it values transparency in the operation of its local government;

WHEREAS, Council desires to take these actions to ensure consistency in its codified ordinances and to protect the health, safety and welfare of its citizens with regard to records production, retention and disposition; and

WHEREAS, Council passed emergency legislation via Ordinance 2020-16 and this legislation permanently replaces it.

NOW, **THEREFORE, BE IT ORDAINED** BY THE COUNCIL OF THE CITY OF FRANKLIN, WARREN COUNTY, OHIO THAT:

SECTION 1: Council for the City of Franklin, Ohio hereby repeals Title One, Chapter 105, in its entirety.

SECTION 2: Council for the City of Franklin hereby adopts and replaces Title One, Chapter 105, as reflected in Exhibit A, attached hereto.

SECTION 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision making bodies of the City of Franklin which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

Passed by Council this 4th day of January, 2021.

ATTEST: Khristi Dunn      APPROVED: Brent W. Centers  
Khristi Dunn, Clerk of Council      Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of Ordinance 2021-01 passed by that body on February 1, 2021.

Approved as to legal form: Khristi Dunn, Khristi Dunn, Clerk of Council

Lynnette Dinkler, Law Director

## ORDINANCE 2021-01

### EXHIBIT A

#### CHAPTER 105 Public Records Policy

105.01	Purpose	105.06	Fulfilling the Public Records Request
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#### CROSS REFERENCES

Availability of Public Records – see O.R.C. 149.43

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#### 105.01 PURPOSE

The purpose of this Public Records Policy is to inform and provide City of Franklin employees of and with a policy, process, and procedure to follow when responding to Public Records Requests that complies with Ohio and federal laws regarding the disclosure of public records while still maintaining privacy and confidentiality of records and information that may be subject to an exception.

Ohio's Public Records Act requires public offices, including municipalities, to make any records created and maintained in the ordinary course of business available to the public, unless specifically exempted by Ohio or federal law. The purpose of the Public Records Act is to provide Ohio citizens and all persons with the ability to become and remain informed about the actions or inactions of government officials. This is intended to provide better government and public policies.

#### 105.02 SCOPE

This Policy applies to all City employees and all requests for City records, whether made verbally or in writing.

#### 105.03 DEFINITIONS

The following terms related to this Policy are defined as follows:

- (a) Archive. Includes any public record that is transferred to the state archives or other designated archival institutions because of the historical information contained on it.

- (b) Charter. A “charter” is an instrument established by the citizens of a municipality, which is analogous to a state’s constitution. A charter outlines certain rights, responsibilities, liberties, or powers that exist in the municipality.
- (c) City. Where the term “City” is used herein, it shall mean the Department, public official or other person have charge and custody of the public records being requested.
- (d) Color of Office. Includes any act purported or alleged to be done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority. See R.C. –§ 149.011(E).
- (e) Commercial. "Commercial" does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.
- (f) Cost. "Cost" means the cost of depleted supplies; record storage media costs; actual mailing costs; any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services or transcription services; and/or any other cost for materials, equipment, and other things necessary for the retrieval, copying and transmitting of the documents.
- (g) Discovery. "Discovery" is a pre-trial practice by which parties to a lawsuit disclose to each other documents and other information in an effort to avoid any surprises at trial. The practice serves the dual purpose of permitting parties to be well-prepared for trial and enabling them to evaluate the strengths and weaknesses of their case.
- (h) In Camera. "In camera" means in chambers. In camera reviews occur when a Judge will review records that are at issue in a public records request off the record to evaluate whether they are subject to any exemptions or defenses that may prevent public disclosure.
- (i) Injunction. An “injunction” is a court order requiring that a person and/or entity act or cease to act in a certain way. For example, if a person who believes a public body has violated the Open Meetings Act files a complaint seeking injunctive relief, the Court may then issue an Order enjoining the public body from further violations and/or requiring it to correct any damage caused by previous violations.
- (j) Litigation. “Litigation” is the process of carrying on a lawsuit and all proceedings and procedures associated with it.
- (k) Mandamus. The term “Mandamus” means we command. A mandamus action refers to a legal action / litigation proceeding that another party files when he/she believes he/she wants to compel a public official to either do something or cease doing something. In the context of public records, a mandamus action would be filed by another person and/or entity for the Court to order a public office to turn over records pursuant to a public records request. The proper name for a Mandamus Action is a petition for a Writ of Mandamus. If the party filing the action (the Relator) prevails, the court may issue a writ commanding the public office and/or person in violation (the Respondent) to correctly perform the duty violated.

- (l) Public Assistance. Means financial assistance or social services that are provided under a program administered by the Department of Job and Family Services or a County Agency pursuant to R.C. Chapters 329, 5101, 5104, 5107, or 5108; or an Executive Order issued under a Federal public benefits program, pursuant to R.C. §107.17.
- (m) Public Assistance Recipient. Means an applicant for, current recipient of, or former recipient of public assistance.
- (n) Public Office. Includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of the State of Ohio for the exercise of any function of government. Public office does not include a non-profit corporation formed for JobsOhio, pursuant to R.C. §187.01.
- (o) Public Official. Includes all officers, employees, or duly authorized representatives or agents of a public office.
- (p) Pro Se. Pro se means for oneself. The term refers to people who represent themselves in court, acting as their own legal counsel.
- (q) Prompt. This standard will be judged within the context of the circumstances of each individual request, taking into account the volume of records requested, the proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.
- (r) Public Record. “Public record” shall mean any record that serves to document the organization, policies, functions, decisions, procedures and other activities of the Council and the City’s administrative offices, boards and committees; shall be determined by an actual use standard; and shall be defined as in §149.43(A) of the Ohio Revised Code and the same exceptions outlined in that Section shall apply.
- (s) Reasonable. This standard will be judged within the context of the circumstances of each individual request, taking into account the volume of records requested, the proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.
- (t) Reasonable Request. A request to inspect public records or for copies thereof shall reasonably identify what public records are being requested, and shall not be ambiguous or overly broad. If a request is not reasonable, the City may deny the request, but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained and accessed in the ordinary course of the City’s business.
- (u) Redaction. “Redaction” means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of “public record.”
- (v) Regular Business Hours. “Regular Business Hours” means the normal business hours of the City of Franklin Municipal Building, excluding holidays or any day that the Municipal Building is closed.

- (w) Requester. The “requester” is the person asking for records. The requestor does not have to put his or her request in writing and does not have to provide his or her identity or the intended use of the requested records. Nothing in this section, however, shall limit the City’s right to ask for certification that the records will not be used for commercial purposes, as otherwise provided in this Chapter.

#### 105.04 WHAT IS A PUBLIC RECORD?

The Ohio Public Records Act only applies to “public records.” The Public Records Act defines public records as records kept by any public office.

Under R.C. § 149.011(G), a record is defined as:

- (a) Any document, device, or item, regardless of physical form or characteristic, including an electronic record;
- (b) The document was created by, received by, or coming under the jurisdiction of any public office of the [State of Ohio] or its political subdivisions;
- (c) The document serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

#### 105.05 PUBLIC RECORDS REQUESTS

The City organizes and maintains its public records so that they are available in response to public records requests. The City also maintains a copy of its current Retention Schedule at the City Clerk’s Office so that it is readily available to the public.

- (a) Form of Public Records Request. Public records requests may be made anonymously. There is no requirement for any individual and/or entity making a public records request to identify themselves or indicate the reason and/or purpose for obtaining the requested records. The City has a Public Records Request Form that individuals and/or entities may use to submit public records requests. The City does not require the Form to be used when making a public records request. However, using the Form will assist the City in obtaining and compiling the information for a requester’s review more quickly. Additionally, the more information that the requester provides to the City when making a records request will assist the City in fulfilling the records request more quickly and efficiently. Unless a records request is ambiguous and/or overbroad, the City will notify all requesters that they may decline to provide more specific information in writing.
- (b) Withholding and/or Redacting Information. The City may withhold and/or redact information contained in a record if the information is exempt under Ohio and/or Federal law. The City will provide an explanation, with the relevant legal citation, when declining a records request. If information has been redacted pursuant to an exemption, the redaction will be clearly made with the relevant legal citation.
- (c) Limitations on Records Requests. The City may limit the number of records that it transmits by United States mail or any other delivery means to a particular requester to only ten (10) per month, unless the requester certifies in writing that the requested records and/or the information contained in the records will not be used or forwarded for commercial purposes. Commercial does not include:

- (1) Reporting or gathering of news;
- (2) Reporting or gathering of information to assist citizen oversight or understanding the operation or activities of government; or
- (3) Non-profit educational research.

In limiting a records request, the City will not:

- (1) Limit the number of public records made available to a single person;
  - (2) Limit the number of records the public office will make available during a fixed period of time; or
  - (3) Establish a fixed period of time before the public office will respond to a request for inspection or copying of public records.
- (d) Ambiguous and Overly-Broad Requests. Requesters must identify records and information being sought “with reasonably clarity.” If the City cannot adequately identify documents responsive to a records request, the City will ask the requester for additional information in order to sufficiently identify the records being sought. This may include the purpose and/or reasons that the requester is seeking the information, because this may assist the City to identify what exactly the requester is looking for. The requester does not have to provide additional information. However, the requester should be made aware that the records request may be denied if the additional information is not provided for the City to sufficiently identify responsive records. An ambiguous request is a request that lacks the clarity the City needs to determine what information and/or records the requester is seeking and where to look for responsive records. An overly broad request is a request that is so inclusive, the City cannot identify the records sought based upon how the City routinely organizes and accesses records. Additionally, a request is overly broad when it amounts to a complete duplication of a major category of records. Overly broad requests include, but are not limited to:

- (1) All records containing particular names or words;
- (2) Duplication of all records related to a specific topic or all records of a specific type;
- (3) Every report filed with the public office for a particular time period, but only when the public office does not organize records in that manner;
- (4) All e-mails sent or received by a particular e-mail address with no subject matter and time limitation;
- (5) All e-mails between two employees, when e-mails are not organized by the sender and recipient in that manner; and
- (6) All documents which document any and all instances of a particular topic (such as lead poisoning) in the last 15 years in any dwelling owned or operated by the public office.

#### 105.06 FULFILLING THE PUBLIC RECORDS REQUESTS

(a) Choice of Medium and Delivery Method. The City will provide prompt inspection of records at no cost during regular business hours. If the requester specifically wants copies, the costs of copies are as follows:

- (1) Paper copies are 10 cents per page;

- (2) Electronic files downloaded to a compact disk (CD) are \$2.00 per disc or thumb drive;
- (3) Electronically e-mailed documents have no charge; and
- (4) The actual cost of postage, mailing supplies, and/or other delivery charges apply.

The City will also provide copies of requested records within a reasonable period of time.

(b) Documents that Can be Withheld: Non-Records and Documents that Must Be Created. The City may withhold any information and/or documents that are “non-records.” Non-records include items, information, and/or documents that do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. The City will not create a document or record in order to respond to a records request – even if the request requires the compilation of information from already existing records. An example of this would be a list and/or table documenting or summarizing programs the City is actively participating in if the City does not routinely keep and/or maintain such information.

(c) Denying, Withholding or Redacting Records. Under law, the City may be obligated and/or permitted to deny, withhold, and/or redact records.

Redaction means obscuring or deleting any information that is exempt from the requirement to produce a public record. For records on paper, redaction is the blacking or whitening out of non-public information. A public office can redact audio, video, and other electronic records by processes that obscure or delete specific content.

If a record contains exempt information, the City will still make the non-exempt information available to the requester.

However, if redacting the information from a record will not protect the exempt information, the City may withhold the entire record.

The City will either make the redactions plainly visible or provide an explanation as to why the information had to be redacted.

(d) No Obligation to Respond to Duplicate Requests. The City has no obligation to respond to a previously denied request if the requester asks for the same (or substantially similar) records a second time.

#### 105.07 RECORD EXEMPTIONS AND LIMITATIONS

(a) Public records may be exempted based on Ohio and/or Federal law. When certain exemptions are invoked, the City may only withhold a record or part of a record that is covered by the exemption. If the City withholds any record on the basis of an exemption, the City will clearly document and state what exemption the City is relying on to withhold the record.

(b) State Exemptions. Exemptions under Ohio law may include, but are not limited to, the following:

- (1) Medical records;
- (2) Records of probation, parole, community control, and/or non-life felony indefinite prison term sentences;
- (3) Records related to minors seeking abortions;
- (4) Records pertaining to adoption proceedings;
- (5) Information contained in the putative father registry;
- (6) Trial preparation records;
- (7) Confidential law enforcement investigatory records;
- (8) Records containing confidential information related to mediations;

- (9) Records containing confidential information related to unlawful discriminatory practice charges and allegations submitted to the Civil Rights Commission;
- (10) DNA records;
- (11) Inmate records;
- (12) Intellectual property records;
- (13) Donor profile records;
- (14) Designated public service worker residential and familial information;
- (15) Trade secrets and related information;
- (16) Information pertaining to the recreational activities of a person under the age of 18;
- (17) Child fatality review board information;
- (18) Nursing home test materials, examinations, or evaluation tools;
- (19) Records the release of which is prohibited under Ohio or Federal law;
- (20) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio Venture Capital Authority;
- (21) Financial statements and data any individual submits for any purpose to the Ohio Housing Finance Agency or the controlling board;
- (22) Daycare records;
- (23) Discharges recorded with a county recorder regarding individuals discharged from the armed forces;
- (24) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;
- (25) Records received and/or created by JobsOhio;
- (26) Information and records that are confidential related to manufacturers of lethal injections;
- (27) Any information created, received, maintained, and/or otherwise in the custody of a government entity that has an individual's social security number on it;
- (28) The confidential name, address, and other personally identifiable information of a program participant in the Address Confidentiality Program;
- (29) Orders for active military service of an individual serving or with previous service in the armed forces of the United States;
- (30) The name, address, contact information, or other personal information of an individual who is less than eighteen (18) years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;
- (31) Protected health information, as defined by 45 C.F.R. § 160.103 of the Health Insurance Portability and Accountability Act, that reveals the identity of the individual subject to the data or could reasonably reveal the individual's identity;
- (32) Any depiction by photograph, film, videotape, or printed or digital image of a victim of a sexually oriented offense;
- (33) Restricted portions of a body-worn camera or dashboard camera recording;
- (34) Fetal-infant mortality review board information;
- (35) Pregnancy-associated mortality review board information;
- (36) Telephone numbers for a victim, a witness to a crime, or a party to a motor vehicle accident being investigated;
- (37) Bureau of Criminal Identification and Investigation information;



- (38) Reports, records, and other information regarding and/or related to instances of actual or threatened domestic violence;
  - (39) Reports, records, and other information regarding and/or related to minor children;
  - (40) Competitive bid proposals, until a final award is made;
  - (41) Information and records related to critical systems and infrastructure;
  - (42) Information related to employee assistance programs
  - (43) Unemployment compensation, benefits, tax, and wage records; and
  - (44) Worker's compensation.
- (d) Federal Exemptions. Exemptions under federal law may include, but are not limited to, the following:
- (1) Records and information specifically deemed secret pursuant to an Executive Order in the interest of national defense or foreign policy and are properly classified as such;
  - (2) Trade secrets and/or other commercial or financial information considered privileged by the owner of the information;
  - (3) Personnel and medical files that would clearly constitute an unwarranted invasion of personal privacy;
  - (4) Geological and geophysical information and data, including maps, regarding and/or related to wells;
  - (5) Internal Revenue Service information, tax returns, and income return information;
  - (6) Confidential, protected health information, pursuant to and/or related to Medicaid, Medicare, CHIP I and II, HIPAA, and Refugee Medical Assistance;
  - (7) Social Security Numbers;
  - (8) Unemployment compensation benefits, tax, and wage records.

#### 105.08 RECORDS RETENTION, MANAGEMENT AND MAINTENANCE

The City has adopted a Records Retention Schedule that is on file in the Clerk's Office and available upon request. The Retention Schedule assists the City in maintaining all public records for a sufficient length of time, while the records are used and/or needed by the City, but without overburdening the City through maintenance and storage. The City organizes and maintains its public records in a manner that the records can be made available for inspection or copying in response to a public records request.

The City prohibits and condemns the unauthorized removal, destruction, mutilation, transfer, damage, or disposal of any record (or part of a record), except as provided by law or under the Retention Schedule.

#### 105.09 POLICE AND FIRE DEPARTMENTS

Authority is hereby given to the Chief of Police and the Chief of Fire EMS to enact separate public records policies for their respective departments, so long as said policies comply with Ohio and Federal law.