



## **An Ordinance Adopting A Uniform FOIA Policy, Procedures, and Costs**

**An ordinance to amend “Part One - Administrative Code of the Codified Ordinances of the City of Vienna, West Virginia, “Chapter Five - Administrative” by enacting Article 153, all relating to freedom of information;** providing findings of the City Council; providing the scope of the ordinance; providing definitions; establishing the procedure for processing freedom of information requests; establishing the methods for disposing of processing freedom of information requests; establishing the times for responding to processing freedom of information requests; establishing the fees to be charged for processing freedom of information requests; and stating the exemptions from processing freedom of information requests.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIENNA, WEST VIRGINIA** that Part One of the Codified Ordinances of the City of Vienna, West Virginia be amended by adding thereto a new article designated 153, all to read as follows:

### **ARTICLE 153 FREEDOM OF INFORMATION ACT**

#### **153.1. Findings.**

The City Council finds that the fundamental philosophy of the American constitutional form of representative government is the principle that government is the servant of the people, and not the master of them. It therefore is hereby declared to be the public policy of the City of Vienna, West Virginia, that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The City Council, in order to assure that the City in a timely manner provides complete and correct information relating to the business of the City, does hereby enact this ordinance to standardize procedures within the City of Vienna associated with processing Freedom of Information Act requests.

#### **153.2. SCOPE.**

This Article applies to all employees of the City, any individual or organization charged with producing City FOIA responses, and contracted organizations and individuals as their contracts may require compliance with this Article or City policies generally.

#### **153.3. DEFINITIONS.**

The definitions ascribed herein are applicable unless the context in which used clearly

requires a different meaning. Additionally, the definitions in West Virginia Code 29B-1-1 et seq. are equally applicable to this Article unless the context in which the term is used clearly requires a different meaning.

1. "Addressee" means the person to whom the FOIA request is addressed.
2. "City" means the City of Vienna, West Virginia.
3. "Custodian" means the Mayor or the person designated by the Mayor to be the custodian.
4. "Department" means the following units of the City: Mayor, Recorder, Finance Director, Fire Department, Police Department, Vienna Utility Board, and Public Works Department.
5. "FOIA" means the West Virginia Freedom Of Information Act (West Virginia Code 29B-1-1, et seq.).
6. "Legal Counsel" means the attorney so designated by the Mayor.
7. "Mayor" means the Mayor of the City, or his or her designee.
8. "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.
9. "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.
10. "FOIA request" means an oral or written statement or question, including an e-mail, to the City for inspection or copying of one or more of the City's records.
11. "Requester" means a person filing a FOIA request for City Records.

#### **153.4. PROCESSING OF FOIA REQUESTS.**

153.4.1. FOIA requests shall be addressed to the Mayor, as custodian of the records requested.

153.4.1(a). If a FOIA request is received by a Department employee, he or she shall immediately refer the FOIA request to his or her Department Head who shall immediately forward the FOIA request to the Mayor. The FOIA request shall then be processed as directed in this section and Section 5 of this Article.

153.4.2. Upon receipt of a FOIA request, the Mayor shall:

153.4.2(a). Record the date the FOIA request was received and establish a file for the FOIA request;

153.4.2(b). Forward the FOIA request to the appropriate Department Head for collection of the requested information.

153.4.2(b)(1). If a Department Head, or his or her designee, thinks a FOIA request was misdirected by the Mayor's Office to the Department, he or she shall immediately call the Mayor's Office for instructions.

153.4.2(b)(2). When the requested information has been collected, the Department Head shall immediately forward the information to the Mayor;

153.4.2(c). If the request is for records that may be in more than one Department, the FOIA request also shall be forwarded to the other relevant Department Heads. The Mayor shall select a lead Department to collect the requested records from all relevant Departments and inform the other relevant Department Heads regarding the identity of the designated lead Department;

153.4.2(d). Send the appropriate Department Head the copies of any Records in the Mayor's office that are responsive to the FOIA request; and

153.4.2(e). If the FOIA request is related to a potentially controversial or sensitive matter, send a copy of the FOIA request to the Legal Counsel and, if necessary, request guidance from the legal counsel for a determination of the applicability of West Virginia Code § 29B-1-4 relating to information exempt from FOIA or other provisions of law, court orders, or court recognized privileges, such as attorney-client, attorney work-product, deliberative process, etc.

### **153.5. ALTERNATIVE DISPOSITIONS OF A FOIA REQUEST.**

153.5.1. The disposition of a FOIA request may be accomplished by:

153.5.1(a). Notifying the requester in writing that the FOIA request lacks reasonable specificity to identify the records requested;

153.5.1(b). Notifying the requester in writing that the requested records are not possessed by the City;

153.5.1(c). Notifying the requester in writing where the requested records may be obtained from the City's website or other websites;

153.5.1(d). Notifying the requester in writing of the time and place at which he or she may inspect and make copies of records;

153.5.1(e). Furnishing copies of the requested records in accordance with the law and this Article, as well as providing an invoice stating the fee that is due;

153.5.1(f). Responding to the requester in writing when the requested records are relevant to a suit or grievance against the City; or

153.5.1(g). Denying the request in writing, in whole or in part.

153.5.2. The response shall include statements that notify the requester:

153.5.2(a). The reasons for the denial, if the requested records are not provided;

153.5.2(b). That the responsibility of the City to produce the requested records is at an end; and

153.5.2(c). That the requester may institute proceedings in the Circuit Court of the jurisdiction where the Records are kept, i.e., the Circuit Court of Wood County, West Virginia.

153.5.3. A copy of the response, whether it provides the requested information or denies the request for information, shall be maintained in the office of the Recorder.

### **153.6. TIME TO RESPOND TO A FOIA REQUEST; EXTENSION OF TIME TO RESPOND.**

153.6.1. Except as otherwise provided in this Article, a response to a FOIA request must be made within five days of receipt of the Request by the City, not including the day of receipt, Saturdays, Sundays, and legal holidays.

153.6.2. If the Custodian determines that the requested records cannot be retrieved and copied before the response is due, the Custodian shall;

153.6.2(a). Process the FOIA request in conformance with Section 5 of this Article;

153.6.2(b). Attempt to contact the Requester by telephone or e-mail to:

153.6.2.(b)(1). Provide any fee information required by Section 8 of this Article;

153.6.2.(b)(2). Explain why the response cannot be timely prepared;

153.6.2.(b)(3). Provide an estimated time when the response will be ready.

153.6.2(c). Send a letter or e-mail to the Requester documenting any telephone conversation, including any fee information required by Section 7 of this Article; and

153.6.2(d). If there was no telephone conversation or e-mail reply, send a letter to the requester containing the information and request that would have been provided in the telephone call.

### **153.7. FEES.**

153.7.1. The fee for searches and compilation for Records that require more than ten (10) minutes to search and/or compile is twenty-five dollars (\$25.00) per hour or the actual cost, whichever is greater.

153.7.2. In addition to the search and compilation fee, fees for copies of requested Records are as follows:

153.7.2(a). Each page is to be furnished at a charge of twenty-five cents (\$0.25) per page printed on 8 ½" x 11" or 8 ½" x 14" paper.

153.7.2(b). Records reproduced on larger paper, tape recordings, videos, or any other type of format other than the method described in 153.7.2(a) above, are provided at actual cost, which includes but may not be limited to, materials, the operator's time, transportation, fees charged by outside entities, and delivery charges.

153.7.3 The City Recorder or the Mayor shall have the discretion to determine if no fee shall be charged for a follow-up request because incorrect, inadequate or inaccurate information was provided in the response to the original FOIA request.

153.7.4 Fees may be waived only by the City Recorder or the Mayor.

153.7.5 The fee when received shall be forwarded to City Finance Director. All correspondence, including e-mail, and the response to the requester, shall be filed with and retained by the Custodian.

153.7.6 All fees charged for accident reports and photographs generated by the Vienna Police Department, whether on a disk or otherwise, shall be five dollars (\$5.00) per report. If the report, including photographs, is in excess of twenty pages, the fee is five dollars (\$5.00) per report plus twenty-five cents (\$0.25) for each page over twenty.

### **153.8. Exemptions.**

153.8.1. The following categories of information are specifically exempt from disclosure under the provisions of the West Virginia Freedom Of Information Act (West Virginia Code 29B-1-1 et seq.) and this article:

153.8.1(a). Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

153.8.1(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: *Provided*, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

153.8.1(c) Test questions, scoring keys and other examination data used to administer a

licensing examination, examination for employment or academic examination;

153.8.1(d) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

153.8.1(e) Information specifically exempted from disclosure by statute;

153.8.1(f) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

153.8.1(g) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

153.8.1(h) Internal memoranda or letters received or prepared by any public body;

153.8.1(i) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

153.8.1(j) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law enforcement or emergency response personnel;

153.8.1(k) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law enforcement and other agencies within the Department of Military Affairs and Public Safety;

153.8.1(l) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

153.8.1(m) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

153.8.1(n) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

153.8.1(o) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

153.8.1(p) Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15) of this subsection;

153.8.1(q) Specific engineering plans and descriptions of existing public utility plants and equipment; and

153.8.1(r) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C.

§222.

153.8.2. As used in subdivisions (i) through (r), inclusive, subsection 153.8.1 of this ordinance, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

153.8.2(a) Intimidate or coerce the civilian population;

153.8.2(b) Influence the policy of a branch or level of government by intimidation or coercion;

153.8.2(c) Affect the conduct of a branch or level of government by intimidation or coercion; or

153.8.2(d) Retaliate against a branch or level of government for a policy or conduct of the government.

153.8.3. Nothing in the provisions of subdivisions (i) through (r), inclusive, of subsection 153.8.1 of this article should be construed to make subject to the provisions of this Article any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

NOTE: The purpose of this ordinance is to establish the procedures to be used by the City when it receives Freedom of Information Act requests.

Passed First Reading \_\_\_\_\_

Passed Second Reading \_\_\_\_\_

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RANDALL C. RAPP, Mayor

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CATHY SMITH, City Recorder