

RESOLUTION NO. 18-01

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**RESOLUTION NO 18-01, AMENDING THE PUBLIC RECORDS POLICY TO REFLECT RECENT CHANGES IN THE WASHINGTON STATE PUBLIC RECORDS ACT**

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WHEREAS, recent changes to the Washington Public Records Act, RCW 42.56 (the Act) provide that Housing Opportunities of SW Washington (HOSWWA) may charge for electronic records; and

WHEREAS, recent changes to the Act, also provide that while HOSWWA may ask for clarification of a records request, it must couple that clarification request with an estimated response time; and

WHEREAS, the Act provides that an agency can deny a request for all records of an agency not relating to a particular topic; and

WHEREAS, it is necessary to amend the policy previously amended through Resolution No. 16-03 to reflect these and other legislative changes.

**NOW THEREFORE**, the Board of Commissioners of Housing Opportunities of SW Washington do ordain as follows:

Housing Opportunities of SW Washington Public Records Policy shall be, and is hereby amended to read as follows:

**INSPECTION AND COPYING OF PUBLIC RECORDS**

Sections:

- i. Definitions.**
- ii. Inspection and copying.**
- iii. Response to requests for inspection and copying.**
- iv. Research not to be performed – Public records not sufficiently identified.**
- v. Certain public records exempt from inspection and copying – Deletion of exempt portions thereof.**
- vi. Electronic communication initiated by city council members.**
- vii. Costs and expenses for inspection and copying.**
- viii. Findings on order regarding public records index.**
- ix. Order regarding public records index.**

*i. Definitions.*

(1) "Nonpublic record" means any writing containing information not relating to the conduct of government, and not relating to the performance of any governmental or proprietary function, retained or in the possession of the city regardless of form or characteristics.

(2) "Public record" means any writing containing information relating to the conduct of government, or the performance of any governmental or proprietary function prepared, owned, used or retained by HOSWWA regardless of form or characteristics. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

- (a) Do not serve in an administrative capacity, and
- (c) Do not have a supervisory role or delegated agency authority.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(4) "Bot request" means a request for public records that is or reasonably appears to have been automatically generated by a computer program or script.

*ii. Inspection and copying.*

(1) Public records possessed by HOSWWA shall be available for inspection and copying between the hours of 10:00 a.m. and 4:30 p.m. daily except for Fridays, Saturdays, Sundays, legal holidays and any other day HOSWWA is closed for business.

(2) No official format is required for making a records request; however, HOSWWA may recommend that requestors use the organization's form available on their webpage. In addition, all public record requests shall identify the public records sought for such inspection and copying.

(3) A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(4) Requests to inspect and copy public records shall be submitted to the CEO or designee, or to the public records representative of the agency. The CEO shall maintain a record of public disclosure requests made to HOSWWA.

*iii. Response to requests for inspection and copying.*

(1) Responses to requests for inspection and copying of public records shall be made promptly.

(a) A request for public records shall be responded to within five business days of receiving a public record request. The response must be made by (i) providing the record, (ii) acknowledging HOSWWA has received the request and providing a reasonable estimate of the time HOSWWA will require to respond to the request, (iii) denying the public record request, or (iv) a combination thereof. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, a Housing Opportunities representative may ask the requester to clarify what information the requester is seeking. Notwithstanding the need to obtain clarification, HOSWWA shall, to the greatest extent possible, provide a reasonable estimate of the time HOSWWA will require to respond to the request if it is not clarified. If the requester fails to clarify the request, and the entire request is unclear, HOSWWA need not respond to the request, otherwise HOSWWA shall respond to those portions of the request that are clear. Denials of requests must be accompanied by a written statement of the specific reasons therefore.

(b) If the request for identifiable public records is granted, the requesting party shall be provided with necessary assistance in performing the inspection and copying equipment shall be made available or assistance in copying, except when and to the extent that such would unreasonably disrupt the operations of HOSWWA. Such copying equipment shall include that which is possessed by HOSWWA to either copy such public records on the same format (i.e., printed or written to be photocopied, electronic tape to electronic tape, computer stored information to a mass data storage device such as a diskette or USB drive (to protect the organization's computer system the requesting party shall only be allowed to use a mass data storage device provided by HOSWWA to the requesting party; HOSWWA shall provide such device at the same cost as to HOSWWA) or converted to a readable format (i.e., computer stored information printed on paper), at the option of the

requester or if there is no choice because such records must be redacted prior to release to the requesting party and such cannot be done electronically.

(c) If HOSWWA does not possess equipment to copy the requested public records in a manner or format sought by the requester, and if such equipment is available commercially, the person responding to such request shall determine the cost of such copying and notify the requester that HOSWWA does not possess the equipment to make the requested copies and the estimated cost of commercial copying.

(d) If the request for public records encompasses a large set of documents and/or it will take time to locate the requested records, the records may be provided to the requesting party on a partial or installment basis. HOSWWA shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

(e) HOSWWA shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons.

(f) HOSWWA may deny a bot request that is one of multiple requests from the requestor to HOSWWA within a twenty-four hour period, if in the determination of the CEO or her designee responding to the multiple requests would cause excessive interference with other essential functions of HOSWWA.

(2) Requests for inspection and copying of identifiable public records, received by mail, shall be honored if doing so does not require an excessive amount of research or retrieval time of HOSWWA employees, does not excessively interfere with essential governmental functions, and if payment therefore is made in advance.

(3) Whenever a request for inspection and copying has been denied in whole or in part, the requester may petition in writing (including email) to the public records officer for a review of that decision. The petition should include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(4) The public records officer shall promptly provide the petition and any other relevant information to the CEO of HOSWWA or designee. That person will immediately consider the petition and either affirm or reverse the denial within two business days following HOSWWA's receipt of the petition, or within such other time as HOSWWA and the requestor mutually agree to.

*iv. Research not to be performed – Public records not sufficiently identified.*

Written requests for inspection and copying of public records shall not be honored if such requests require HOSWWA employees to compile information, perform research, require reformatting of data, if the public records sought by the requester are not sufficiently identified, or if the information requested to be inspected and copied consists of nonpublic records.

*v. Certain public records exempt from inspection and copying – Deletion of exempt portions thereof.*

Public records described in RCW 42.56.210 (Certain personal and other records exempt), 42.56.230 (Personal information), 42.56.240 (Investigative, law enforcement, and crime victims), 42.56.250 (Employment and licensing), 42.56.260 (Real estate appraisals), 42.56.270 (Financial, commercial, and proprietary information), 42.56.280 (Preliminary drafts, notes, recommendations, intra-agency memorandums), 42.56.290 (Agency party to controversy), 42.56.300 (Archaeological sites), 42.56.310 (Library records), 42.56.320 (Educational information), 42.56.330 (Public utilities and transportation), 42.56.390 (Emergency or transitional housing), 42.56.420 (Security), 42.56.430 (Fish and wildlife), 42.56.460 (Fireworks), as now effective or as subsequently revised, and any other public records exempt from public inspection and copying by the laws of the State of Washington shall not be available for public inspection and copying; provided, however, when exempt portions of public records can be erased, excised or deleted, the remainder thereof shall be open to public inspection and copying.

*vi. Electronic communication initiated by HOSWWA Board of Commissioners.*

Electronic communications (e-mail) initiated by members of HOSWWA and simultaneously directed to three or more other members of the Board of Commissioners are declared to be public records and subject to public inspection and copying. Such electronic communication shall be maintained in accordance with the laws of the State of Washington.

*vii. Costs and expenses for inspection and copying.*

HOSWWA finds that calculating the actual costs it charges for providing records would be unduly burdensome and therefore adopts the following charges for copying public records:

- (1) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of HOSWWA equipment to photocopy public records;
- (2) Ten cents per page for public records scanned into an electronic format or for the use of HOSWWA equipment to scan the records;
- (3) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

(4) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of HOSWWA equipment to send the records electronically. HOSWWA shall take reasonable steps to provide the records in the most efficient manner available to HOSWWA in its normal operations; and

(5) The actual cost of any digital storage media or device provided by HOSWWA, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(6) The charges in this section may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(7) HOSWWA may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under this section when HOSWWA reasonably estimates and documents that the costs allowed under this section are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments.

(8) HOSWWA shall not impose copying charges under this section for access to or downloading of records that HOSWWA routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that HOSWWA provide copies of such records through other means.

(9) A requestor may ask HOSWWA to provide, and if requested HOSWWA shall provide, a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(10) In addition to the charge imposed for providing copies of public records and for the use by any person of HOSWWA equipment copying costs, HOSWWA may include a customized service charge. A customized service charge may only be imposed if HOSWWA estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by HOSWWA for other Housing Opportunities purposes.

(a) The customized service charge may reimburse HOSWWA up to the actual cost of providing the services in this subsection.

(b) HOSWWA may not assess a customized service charge unless HOSWWA has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

(c) HOSWWA may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If HOSWWA makes a request available on a partial or installment basis, HOSWWA may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, HOSWWA is not obligated to fulfill the balance of the request. HOSWWA may waive any charge assessed for a request pursuant to HOSWWA rules and regulations. HOSWWA may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request.

(11) HOSWWA shall impose no charge for the services of Housing Opportunities employees who assist in inspection and copying of public records; provided, however HOSWWA may include a customized service charge.

*ix. Findings on order regarding public records index.*

(1) The Revised Code of Washington (“RCW”) requires all cities and public agencies to maintain and make available a current index of all public records.

(2) The RCW also states that if maintaining such an agency operation, an agency must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome.

(3) When such an order is made, all indexes maintained by that agency must be made available to provide identifying information on those records which are available for inspection and/or copying.

(4) The Housing Opportunities of SW Washington is comprised of 5 departments, their divisions and subdivisions, which maintain a databases and/or record-keeping systems for the indexing of records and information together.

(5) Because HOSWWA has records which are diverse, complex and stored in multiple locations and in multiple computer systems and databases, it is unduly burdensome, if not physically impossible, to maintain a central index of records.

(6) HOSWWA will fully comply with the provisions of the RCW as they relate to the Public Disclosure Act, under Chapter 42.56 RCW.

**DISCLAIMER OF LIABILITY**

(1) If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this

ordinance and the same shall remain in full force and effect. Housing Opportunities of SW Washington hereby declares that it would have passed this Resolution, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

(2) That nothing in this Resolution hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

(3) That the Housing Opportunities of SW Washington CEO is hereby ordered and directed to cause this Ordinance to be published.

(4) Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and affirmed.

(5) This Resolution shall be in full force and effect from and after thirty (30) days from the date of its passage and publication as provided by law. Requests for public records submitted prior to the effective date shall be subject to the provisions of this Resolution, and associated fees, at the time such records are produced.

(6) Neither HOSWWA nor any officer, employee, official, or custodian shall be liable, nor shall cause of action exist, for any loss or damage based upon release of Public Records if the person releasing the records acted in good faith in attempting to comply with this policy. This policy is not intended to expand or restrict the rights of disclosure or privacy, as they exist under state and federal law. Despite the use of any mandatory terms, such as "shall", nothing in this policy is intended impose mandatory on HOSWWA beyond those imposed by state and federal law.

Passed by the Board of Commissioners this 27<sup>th</sup> day of November, 2017.

Approved by the Chair this 27<sup>th</sup> day of November, 2017.

HOUSING OPPORTUNITIES OF SW WASHINGTON:

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