

**CITY OF MERCER ISLAND
PUBLIC RECORDS ACT RULES OF PROCEDURE**

The Public Records Act, RCW 42.56, requires public agencies to make identifiable, non-exempt public records available for inspection and copying upon request and to publish rules of procedure to inform the public how access to public records will be accomplished. The purpose of these rules is to provide the public full and timely access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of efficient administration of our City government. The Act and these Rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the Act, the City shall abide by the provisions of the Act describing its purposes and interpretation.

Section 1. Definitions

- a. **Public record.** A writing, regardless of physical form, containing information relating to the conduct of government or the performance of any governmental or proprietary function, prepared, owned, used or retained by the City, excluding records of volunteers that are not otherwise required to be retained by the agency and which are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission or internship; and do not have a supervisory role or delegated authority.
- b. **Writing.** Broadly defined, a writing means handwriting, typewriting, printing, photostating, photographing, and any other means of recording any form of communication, including, but not limited to, letters, words, pictures, sounds or symbols or their combinations; papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including data compilations from which information may be obtained or translated. An email, text, social media posting, and database are also "writings."
- c. **Identifiable record.** An identifiable record is one in existence at the time the records request is made, and that City staff can reasonably locate. A request for all or substantially all records prepared, owned, used or retained by an agency is not a valid request for identifiable records, provided that a request for all records regarding a specific topic or containing a specific keyword or name shall not be considered a request for all an agency's records. A keyword must have some meaning that reduces a request from all or substantially all an agency's records. The request should include search terms that are for identifiable records sought by the requestor, which produce meaningful search results by the City.
- d. **Exempt record.** All agency records are available for review by the public unless they are specifically exempted or prohibited from disclosure by state law, either directly in RCW 42.56 or in other statutes.
- e. **Counter document.** A frequently requested document retained at City Hall or within departments that is known to be public information and may be released without need to file a written public disclosure request.
- f. **Email.** Electronic mail is an informational transfer system which uses computers for sending and receiving messages. It is comprised of individual units of information divided into an "envelope" and the message contents. The envelope, or message header, contains the mailing address, routing instructions, transmission and receipt information, and other information the system needs to deliver the mail item correctly. Classification of emails as public records is dependent on the content of the message. Email messages are public records when they are created or received in the transaction of public business and retained as evidence of official actions.

Section 2. Description of City Services and Central Office

The City of Mercer Island is a Municipal Corporation in the State of Washington that provides the full range of municipal services through its various departments. These functions include, but are not limited to, maintaining public records. The Public Records Officer shall maintain the process through which the public may obtain information from the City. The City of Mercer Island's City Hall is located 9611 SE 36th Street, Mercer Island, WA 98040. The City also has several departments at other locations throughout the City.

Section 3. Public Records Officer

Any person wishing to request access to public records or seeking assistance in making a request should contact the City's Public Records Officer. The Paralegal has been designated by the City Manager as the City's Public Records Officer (Appendix A). The Public Records Officer will oversee compliance with the Public Records Act but may designate other City staff members who may process requests for public records. The Public Records Officer or his/her designees shall provide the fullest assistance to requesters, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with the essential functions of the City. When using these Rules, references to the Public Records Officer should be interpreted to also include his/her designees.

General City Requests

Mary Swan
Paralegal/Public Records Officer
9611 SE 36th Street
Mercer Island, WA 98040
206-275-7651
pr@mercerisland.gov

Police and Fire Department Requests

Shelby Pattajo
Mercer Island Police Evidence Technician/
Public Records Officer
9611 SE 36th Street
Mercer Island, WA 98040
206-275-7931
pr@mercerisland.gov

For Mercer Island Municipal Court records please contact the Court directly at:

Mercer Island Municipal Court
9611 SE 36th Street
Mercer Island, Washington 98040
Telephone: 206-275-7604
Fax: 206-275-7980

The Municipal Court's regular business hours are: Monday through Thursday, 9:00 am to 4:00 pm, excluding legal holidays.

Section 4. Availability of public records

- a. **Hours for inspection.** Public records are available for inspection during the City's regular business hours: Monday through Friday, 8:30 a.m. to 5:00 p.m., excluding legal holidays. City staff and the requester may make mutually agreeable arrangements for times of inspection and copying. However, the City shall have final say regarding hours for inspection.
- b. **Place of inspection.** Records will typically be made available for inspection at City Hall. Records must be inspected at the City offices; however, City staff and the requester may make mutually agreeable arrangements for inspection if the specific records being sought are maintained at field offices of the City.

A requester shall not take City records from City offices without the permission of the Public Records Officer.

- c. **Internet access to records.** A variety of records are available on the City of Mercer Island web site at www.mercerisland.gov. Requesters are encouraged to use the search function and view documents available on the City's website. In addition, documents previously provided to other requesters can be searched, viewed and downloaded through the City's open public records portal, NextRequest, by clicking here: <https://mercerisland.nextrequest.com/documents> and searching by keyword.
- d. **Records index.** The City has determined by formal order (Appendix B) that maintaining a central index of City records is unduly burdensome, costly, and would interfere with City operations due to the number and complexity of records generated because of the wide range of City activities.
- e. **Organization of records.** City departments will maintain records in a reasonably organized manner and the City will take reasonable actions to protect records from damage and disorganization.
- f. **Retention of records.** The City is not required to retain all records it creates or uses. The Washington State Archives (a division of the Washington Secretary of State's Office) approves a general retention schedule for local agency records (including cities) that is common to most agencies. When reference is made to retention schedule within these Rules, it should be interpreted to reference this schedule. The retention schedule for local agencies is available at: www.sos.wa.gov/archives/RecordsRetentionSchedules.aspx

Section 5. Making a request for public records

- a. **Reasonable notice that the request is for public records.** A requester must provide the City with reasonable notice that the request being made is for public records. If a request is contained in a larger document unrelated to a public records request, the requester should point out the public records request by labeling the front page of the document as containing a public records request or otherwise calling the request to the attention of the Public Records Officer to facilitate timely response to the request. A request should be for an identifiable record. A request for information is not subject to the Public Records Act.
- b. **Form.** Any person who wants to inspect or copy identifiable public records of the City is encouraged to make the request using the City's online public records portal www.mercerisland.nextrequest.com. Written requests can be made by downloading and completing the public records request form. Public Records Requests are also accepted by mail, phone, fax, email or in person, and will be entered into the portal for processing.

The following information should be included in the request:

- Name and address of requester;
 - Other contact information, including telephone number and email address;
 - Identification of the requested records adequate for the Public Records Officer to locate the records;
 - The date and time of day of the request.
- c. **Prioritization of records.** The Public Records Officer may ask a requester to prioritize the records he or she is requesting so that the most important records may be provided first.
 - d. **Copies.** If the requester wishes to have copies of the records made, he or she should so indicate and make arrangements to make a deposit or pay for the copies, as further discussed in Section 10 below.

- e. **Oral Requests.** While the City's Public Records Request portal is encouraged, the Public Records Officer shall accept requests for public records by telephone or in person. If an oral request is made, the Public Records Officer will record the substance of the request and enter it into the City's Public Records Portal, NextRequest.
- f. **Requests made directly to City departments.** Requests for public records other than identified "counter documents" that are made directly to departments shall be delivered to the Public Records Officer immediately upon receipt for coordinated processing through NextRequest.
- g. **Purpose of request.** A requester need not state the purpose of the request. However, to clarify or prioritize a request and provide responsive records, the Public Records Officer may inquire about the nature or scope of the request. If the request is for a list of individuals, the Public Records Officer may ask the requester if he/she intends to use the records for a commercial purpose. The City is not authorized to provide lists of individuals for commercial purposes. The Public Records Officer may also seek sufficient information to determine if another statute may prohibit disclosure.
- h. **Overbroad requests.** The City may not deny a request for identifiable public records solely because the request is overbroad. However, the City may seek clarification, ask the requester to prioritize the request so that the most important records are provided first, and/or communicate with the requester to limit the size and complexity of the request. The City may also provide the responsive records in installments over time. When a request uses an inexact phrase such as "all records relating to", the Public Records Officer may interpret the request to be for records which directly and fairly address the topic. When the requester has found the records he or she is seeking, the requester should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.
- i. **Bot Requests.** The City may deny a "bot" request that is one of multiple requests the City believes was automatically generated by a computer program or script.

Section 6. Processing public records requests

- a. **Providing "fullest assistance."** These rules and any related policies or procedures identify how the City will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the agency, provide fullest assistance to requesters and provide timely possible action on public records requests. All assistance necessary to help requesters locate responsive records shall be provided by the Public Records Officer, provided that the giving of such assistance does not unreasonably disrupt the daily operations of City Hall or other duties of any assisting employee(s) in other City departments.
- b. **Order for processing requests.** The Public Records Officer will process requests in the order that allows the most requests to be processed in the most efficient manner.
- c. **Acknowledging receipt and fulfilling requests.** Within five business days of receipt of the request, the Public Records Officer will do one or more of the following:
 - Make the record available for inspection or copying;
 - Respond to a request to provide access to a public record by providing the requester with a link to the City's website containing an electronic copy of that record if it can be determined that the requester has agreed and has internet access;
 - If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requester;

- Acknowledge that the request has been received and provide a reasonable estimate of when records will be available;
 - If the request is unclear or does not sufficiently identify the requested records, request clarification from the requester. Such clarification may be requested and provided by telephone;
 - Deny the request and provide the statutory authority for such denial.
- d. **Reasonable estimate of time to fully respond.** If not able to respond within the five (5) business day period, the Public Records Officer must provide a reasonable estimate of the time it will take to fully respond to the request. Additional time may be needed to clarify the scope of the request, locate and assemble the records, redact confidential information, prepare a withholding index, notify third party persons or agencies affected by the request and/or consult with the City Attorney about whether the records are exempt from disclosure. The Public Records Officer should briefly explain the basis for the time estimated to respond. Should an extension of time be necessary to fulfill the request, the Public Records Officer will provide a revised estimate and explain the circumstances that make it necessary.
- e. **Notification that records are available.** If the requester has sought to inspect the records, the Public Records Officer will notify him or her that the entire response or an installment is available for inspection and ask the requester to contact the City to arrange a mutually agreeable time for inspection. If the requester seeks copies, the Public Records Officer should notify him or her of the projected costs and whether a deposit is required before making the copies.
- f. **Delayed response from the City.** If the City does not respond in writing within five business days of receipt of the request for disclosure, the requester should contact the Public Records Officer to determine the reason for the delay.
- g. **Consequences of requester's failure to clarify a request.** If the requester does not respond to the City's request for clarification within 30 days of the City's request, the Public Records Officer may consider the request abandoned, send a letter closing the response to the requester, and re-file the records.
- h. **Good faith compliance with the Public Records Act.** The City, and its officials or employees are not liable for loss or damage based on release of a public record if the City, official or employee acted in good faith in attempting to comply with the Public Records Act.
- i. **Searching for records.** The City must conduct an objectively reasonable search for responsive records. The Public Records Officer will determine where responsive records are likely to be located and involve Records Coordinators in other departments, as needed, to assemble the records. After the records are located, the Public Records Officer should take reasonable steps to narrow down the number of records assembled to those that are responsive.
- j. **Preserving requested records.** Upon receipt of a public records request the Public Records Officer will notify each department that may have records associated with the records request. If a requested record is scheduled shortly for destruction under the City's records retention schedule, the record cannot be destroyed until the public disclosure request has been resolved. Once a request has been closed, the Public Records Officer can destroy the record or will notify the department that the record can be destroyed in accordance with the retention schedule.
- k. **Inspection of records.** To the extent possible due to other demands, the Public Records Officer shall promptly provide space to inspect public records at City Hall. The requester must claim or review the assembled records within thirty days of the Public Records Officer's notification that the records are available for inspection or copying. The Public Records Officer will notify the requester in writing of this

requirement and suggest that he or she contact the agency to make arrangements to claim or review the records. If the requester or a representative of the requester fails to claim or review the records within the thirty-day period, or make other arrangements, the Public Records Officer may close the request and re-file the assembled records. Members of the public may not remove documents from the viewing area or disassemble or alter any document.

- l. **Providing copies of records.** The requester shall indicate which documents he or she wishes to have copied using a mutually agreed upon non-permanent method of marking the desired records. After inspection is complete, the Public Records Officer will arrange for copying. Making a copy of an electronic record is considered copying and not creation of a new record.
- m. **Providing records in installments.** When the request is for a large volume of records, the Public Records Officer will provide access for inspection and copying in installments if he or she reasonably determines that it would be practical to provide the records in that way. If the requester fails to inspect the entire set of records of one or more of the installments within 30 days, the Public Records Officer may stop searching for the remaining records and close the request. The Public Records Officer will provide the requester a description of what documents are included in each installment and notice when each installment is available.
- n. **Completion of inspection.** When the inspection of the requested records is complete, and all requested copies are provided, the Public Records Officer will indicate that the City has completed a diligent search for the requested records and made any located non-exempt records available for inspection.
- o. **Closing withdrawn or abandoned requests.** If the requester withdraws the request, fails to fulfill his or her obligations to inspect the records, or fails to pay the deposit or final payment for the requested copies, the Public Records Officer will close the request and indicate to the requester that the City has closed the request. The Public Records Officer will document closure of the request and the conditions that led to closure.
- p. **Later discovered documents.** If, after the Public Records Officer has informed the requester that the City has provided all available records, the City becomes aware of additional responsive documents that existed on the date of the request, the Public Records Officer will promptly inform the requester of the additional documents and provide them on an expedited basis.
- q. **No duty to create records.** The City is not obligated to create a new record to satisfy a records request; however, the City may, in its discretion, create such a new record to fulfill the request where it may be easier for the City to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request.
- r. **No duty to supplement responses.** The City is not obligated to hold current records requests open to respond to requests for records that may be created in the future. If a public record is created or comes into the possession of the City after a request is received by the City, it is not responsive to the request and will not be provided. A new request must be made to obtain later-created public records.

Section 7. Processing requests for electronic records.

The process for requesting electronic public records is the same as for requesting paper public records.

- a. **Format.** When a requester requests records in an electronic format, the City will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format, or in a format that is reasonably translatable from the format in which the City keeps the record.
- b. **Electronic copy of record.** The City may provide access to public records by providing links to the web site containing an electronic copy of the record, provide records on disk, or transmit the responsive record via e-mail. The Public Records Officer will work with the requester to determine the most appropriate method for providing electronic copies of responsive records.

Section 8. Retention of records.

The City will retain its records in accordance with retention schedules approved by the State Local Records Committee and any amendments to those schedules that the City of Mercer Island has made. Public records may not be destroyed per a retention schedule if a public records request or actual or anticipated litigation is pending.

Section 9. Redactions, exempt from disclosure, personal privacy and protecting rights of others

- a. **Redactions.** If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the Public Records Officer will redact (strike out) the exempt portions, provide the nonexempt portions, and indicate to the requester why portions of the record are being redacted. For example, to prevent an unreasonable invasion of personal privacy, the Public Records Officer shall redact identifying details such as social security numbers when she makes available or publishes any public record. In each case, the justification for the deletion shall be explained in writing in a redaction log.
- b. **Exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. The City is not required to permit public inspection and/or copying of records for which public disclosure of the record is prohibited, restricted or limited by state or federal statute or regulation. If the City believes that a record is exempt from disclosure and should be withheld, the Public Records Officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld in an exemption log. If only a portion of the record is determined to be exempt, the Public Records Officer will redact the exempt portions and provide the non-exempt portions.
- c. **Commercial Purposes.** Pursuant to RCW 42.56.070(9), the City of Mercer Island is prohibited from disclosing lists of individuals for commercial purposes.
- d. **List of Exemptions.** The Public Records Act, RCW 42.56, provides that a number of document types and information are prohibited from being disclosed or are exempt from public inspection and copying ([see WA State Attorney General's exemption list](#)). In addition, there are other statutes not listed in Chapter 42.56 RCW which may exempt or prohibit disclosure of certain documents [[see exemption list outside RCW 42.56](#) (Appendix C to "Public Records Act for Washington Cities, Counties, and Special Purpose Districts," Municipal Research and Services Center, March 2016, and as amended)].
- e. **Personal privacy.** When a public record is exempt from disclosure under the Public Records Act, the exemption does not apply if the information that might violate personal privacy or vital government interests can be deleted from the records being sought.
- f. **Protecting rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, prior to providing the records the Public Records Officer may give notice to those whose rights may be affected by the disclosure. Generally, two weeks' notice will be given

in order to make it possible to contact the requester and ask him or her to revise the request or, if necessary, allow affected individuals to seek an order from a court to prevent or limit the disclosure. The notice to the affected person(s) will include a copy of the request.

Section 10. Costs of providing copies of public records

Per RCW 42.56, the City cannot charge for locating a public record or for making records available for review or inspection. The City may charge, however, for the actual costs of copying public records, including the staff time spent making copies. This provision includes responses to public records requests for electronic records.

a. **Fee schedule.** The City charges the following for copies of records:

1. Photocopies, per page	\$0.15
2. Printed copies of electronic records, per page	\$0.15
3. Scanning paper records, per page	\$0.10
4. Electronic files or attachments uploaded for electronic delivery (email, cloud-based data storage service, or other means of electronic delivery), for each four (4) files	\$0.05
5. Transmission of records in an electronic format or for the use of agency equipment to send the records electronically, per gigabyte (GB)	\$0.10
6. Any digital storage media or device provided by the agency	Actual cost

- b. **Electronic records.** When records are provided electronically on a CD, DVD, thumb drive, or other electronic device, the requester will be charged for the cost of the electronic storage device. The City may charge an actual-cost service charge for requests that require use of IT expertise to prepare data compilations or provide customized electronic access services when not used by the City for other purposes. A cost estimate and explanation will be provided to the requester before incurring the costs.
- c. **Certified copies.** Where the request is for certified copies, an additional charge may be applied.
- d. **Faxing and mailing charges.** The City may also charge actual costs of long distance facsimile transmission and/or mailing, including the cost of the shipping container.
- e. **Sales tax.** The City will not charge sales tax on copies of records.
- f. **Use of other copying services.** The City is not required to copy records at its own facilities and may determine to use a commercial copying center. The City may charge its actual out of pocket costs incurred to hire third parties for printing and/or copying records produced in response to a public records request. The City may request a deposit and will bill the requester for the amount charged by the vendor.
- g. **Deposit or payment by installments.** Before beginning to copy records, the Public Records Officer may require a deposit of up to ten percent (10%) of the estimated costs of copying the records selected by a requester. The Public Records Officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

- h. **Methods of payment.** Requesters can pay for records online through the City's records portal NextRequest. Payments may also be made by cash, check, or money order to the City of Mercer Island.
- i. **Combination of charges authorized:** As authorized by RCW 42.56.120(2)(c), and referenced in the Fee Schedule table above, the City may combine charges to the extent that more than one type of charge applies to copies produced in response to a specific request.
- j. **Waiver of copying charges.** The Public Records Officer has the discretion to waive copying charges for small requests, or for individuals or government agencies doing business with the City if the Public Records Officer determines that this action is in the best interest of the City. The decision to assess fees for fulfilling a public records request shall be made on a consistent and equitable basis, dependent primarily upon the amount of staff time required for copying, scanning, shipping, uploading, and/or transmitting the records associated with fulfilling a request.

Section 11. Denials of requests for public records

- a. **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including by e-mail) to the Public Records Officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the Public Records Officer or designee denying the request.
- b. **Consideration of petition for review.** The Public Records Officer shall promptly provide the petition and any other relevant information to the City Attorney or his or her designee to conduct the review. The City Attorney or his or her designee will promptly consider the petition and either affirm or reverse the denial within two business days following the City's receipt of the petition, or within such other time to which the City and the requester mutually agree.
- c. **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the end of two business days after the initial denial regardless of any internal administrative appeal.

APPENDICES:

- Appendix A - Public Records Officer Designation Formal Order
- Appendix B - Indexes for Public Records Formal Order
- Appendix C - Public Records Request Form

Additional Resources:

- [List of Exemptions within Chapter 42.56 RCW](#)
- [List of Exemptions outside of Chapter 42.56 RCW](#)
- [Washington State Public Records Act \(Chapter 42.56 RCW\)](#)
- [Public Records Act - Model Rules \(Chapter 44-14 WAC\)](#)

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