

ORDINANCE NO. 2014-33

AN ORDINANCE TO RESCIND ORDINANCE 2008-56 AND TO ADOPT A REVISED POLICY FOR RECORDS REQUESTS

WHEREAS, the Charter of the City of Franklin, Article VII, Section 3, establishes the City Recorder as the keeper of the public records of the City; and

WHEREAS, Ordinance 2008-56, adopted by the Board of Mayor and Aldermen on November 25, 2008, authorizes the City departments to impose a reasonable fee for photocopies; and

WHEREAS, the City Recorder has further acted in good faith under Schedule of Reasonable Charges as established by the Office of Open Records Counsel; and

WHEREAS, the City Recorder has determined that many of the current charges assessed for certain records need to be updated to more adequately convey the actual cost to the City; and

WHEREAS, the City Recorder has continually acted in good faith under the Tennessee Public Records Act to provide efficient service to all citizens requesting copies of public records; and

WHEREAS, the Office of Open Records Counsel recently issued an opinion that cities should establish by Ordinance to establish procedures for inspection of, access to, and duplication of public records pursuant to the Tennessee Public Records Act; and

WHEREAS, the Board of Mayor and Aldermen believe it is in the best interest of the City of Franklin to rescind Ordinance 2008-56 to address modified fees and to formalize the City's policy and procedures related to the fulfillment of public records requests for Tennessee citizens.

NOW, THEREFORE:

SECTION 1. BE IT ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee:

That Ordinance 2008-56 is hereby rescinded.

SECTION 2. BE IT FURTHER ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee:

That the City of Franklin hereby adopts The City of Franklin Guidelines for Access to and Reproduction of Public Records and Schedule of Charges for Reproduction of Public Records, attached as Exhibit A and incorporated as if restated fully herein.

SECTION 3. BE IT FINALLY ORDAINED by the Board of Mayor and Aldermen of the City of Franklin, Tennessee:

That this Ordinance shall repeal any ordinance or parts of any ordinance in conflict herewith, and shall take effect immediately after its passage on second and final reading, the health, safety and welfare of the citizens of Franklin requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: _____
ERIC S. STUCKEY
CITY ADMINISTRATOR

BY: _____
DR. KEN MOORE
MAYOR

PASSED FIRST READING

PASSED SECOND READING

Approved as to Form:

Kristen L. Corn, Staff Attorney

THE CITY OF FRANKLIN GUIDELINES FOR ACCESS TO AND REPRODUCTION OF PUBLIC RECORDS AND SCHEDULE OF CHARGES FOR REPRODUCTION OF PUBLIC RECORDS

It is the policy and intent of the City to comply with Tennessee's Public Records Act (T.C.A. § 10-7-503, et seq.) by permitting the inspection and copying of the public records of the City for Tennessee citizens.

While requests for the inspection and copying of public records of the City shall be handled by the City as expeditiously as possible, the City also has the responsibility to:

(1) Preserve the confidentiality of public records that are confidential pursuant to state and federal law, including the Tennessee Public Records Act (T.C.A. § 10-7-503 et seq.).

(2) Protect public records from damage or disorganization.

(3) Balance the allocation of personnel to records inspection and copying duty against the prevention of excessive interference with other essential functions of the City.

DEFINITIONS

In the interpretation and application of this policy, the following terms have the meanings indicated:

“Confidential record” is any record, or part of a record, which is defined by the Tennessee Public Records Act, or other state and federal laws, as being exempt from public inspection, including, but not limited to, those records listed in T.C.A. § 10-7-504.

“Department Director” is as defined by the City of Franklin Human Resources Manual, and means the supervisor immediately in charge of a department or his/her designee for purposes of this Policy.

“Public official” means any elected or appointed town official who has legislative or administrative duties prescribed by the City's charter, the City's municipal code, or any ordinance or resolution of the City. It also includes any county, state or federal official who makes a request for the City's records on behalf of the government he or she represents.

“Public record” means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance in connection with the transaction of official business by the City.

“Open Records Coordinator” means the Assistant City Recorder, who has been tasked with completing all open records requests, or his or her designee or designees.

“Requestor” means a Tennessee citizen requesting access to or a copy of a public record.

CUSTODY OF RECORDS

The City's records shall remain in the physical custody of the Department Director, and on the City's premises, at all times.

GENERAL PROCEDURE FOR INSPECTION AND COPYING OF RECORDS

Pursuant to Tenn. Code Ann. §10-7-503, any citizen may request to inspect or obtain copies of the City of Franklin's records. Citizens wishing to inspect or copy City records shall make a request for inspection to the department of the City that maintains the records. If the requestor does not know which department maintains the records, the request shall be made to the Open Records Coordinator, who will direct the requestor to the appropriate department. The request shall be made upon the form prescribed by the City. All citizens requesting to view a public record or to obtain a copy of a public record shall be required to produce a photo identification issued by a governmental entity. If the person requesting inspection fails or refuses to complete the form, the City employee handling the request shall complete the form with information provided by the requesting party, and shall note that the person requesting the record refused to complete the form.

When voluminous records are requested for inspection, the person requesting access shall make an appointment with the Open Records Coordinator or his or her designee from the department holding the records. Appointments for inspection of records may be for no longer than two (2) hours in one day per request. If further inspection is needed by the requesting party, another appointment may be scheduled. The purpose of this policy is to prevent monopolization of working hours of City/City employees and interference with their work duties. Employees shall make every effort to schedule appointments so as to provide full access to the requesting party.

All inspections of records must be performed under the supervision of an employee of the City.

ASSISTANCE IN LOCATION AND DELIVERY OF RECORDS FOR INSPECTION

All open records requests shall be handled by the Open Records Coordinator, with the exception of requests for accident reports, which shall be handled by the Police Records Department. The City may, at its discretion, allow other exceptions as well. Any Department Director who receives an open records request shall forward the request to the Open Records Coordinator, and shall provide the Open Records Coordinator with the necessary assistance to help locate the requested records. ***To the extent possible, the records requested shall be provided immediately.*** If the records cannot be provided immediately, the Open Records Coordinator shall, for records requests made before 11:00 A.M., make a determined effort to provide them by the end of the working day. However, the Open Records Coordinator has the discretion to delay the delivery of the records for inspection, that discretion to be governed and limited by such reasonable variables as: the kind, amount, and nature of the records requested; the need for redaction due to confidential information; uncertainty as to what records are requested; the location of the records requested; the format in which the records are requested; the extent of the Department Director's resources to locate the records at the time the request is made; intervening emergencies, problems, and other events that might reasonably delay the delivery of the records for inspection; and the propensity of the request to create undue disruption of other essential department functions. No employee shall ever unnecessarily delay the delivery of records for inspection.

Within seven business days of a request for records, the Open Records Coordinator shall:

- (1) Produce the records requested;

(2) Deny the records in writing, giving an explanation for denial, or,

(3) In the case of voluminous requests, provide, in writing, the requestor with an estimated time frame for production and an estimation of duplication costs.

ELECTRONIC RECORDS

Some public records that are stored, contained or available as data or information within the memory or storage facilities of computer or electronic equipment, might be subject to inspection (and copying) only through the services of City employees familiar with the operation of equipment that facilitates the inspection (or copying). The Open Records Coordinator and Department Director shall make a reasonable effort to ensure that the records are available for inspection under the same rules governing inspection above. However, where these records create special problems of determining confidentiality of all or some of their parts before they are viewed, additional delays in the delivery of the records not typical of paper copies of records may occur. The Open Records Coordinator and Department Director shall keep these delays to a minimum. The Department Director shall notify the Open Records Coordinator of the approximate length of delay in the delivery of the records for inspection, and the Open Records Coordinator shall enter it on the request for records.

Unless confidential information cannot be obscured from view, the requestor may view the information on the City's computer screen. Otherwise, the requestor may have the records transferred to a diskette or other compatible storage medium, or request paper copies of such records. If redaction is not possible on the electronic record, the requestor may be required to inspect or, in the event of a request for copies, procure paper copies.

LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL RECORDS

Upon receiving a request to inspect a copy of a public record, the Open Records Coordinator shall grant the request unless he or she determines that the record requested is confidential, in whole or in part, under the Tennessee Public Records Act and/or any other applicable law. In cases of records that are confidential in part, the Open Records Coordinator shall deliver for inspection that part of the record not confidential by redacting confidential information where necessary. Where the Open Records Coordinator is uncertain whether a requested record is confidential, he or she shall as expeditiously as possible consult with the Law Department. If after consultation with the Law Department, uncertainty still exists, the Open Records Coordinator shall inform the requestor that uncertainty exists as to the confidentiality of the record, and on the request indicate the reason for the uncertainty with as much specificity as possible, and the approximate date the uncertainty will be resolved.

If the Open Records Coordinator determines that the record is confidential, he or she shall notify the requestor. The Open Records Coordinator shall specifically supply the requestor with a rejection of the request, noting the reason that the record is confidential and citing, if possible, the statute supporting the confidentiality.

The records of former employees receive the same confidentiality protections as those of current employees. Any information in the personnel file of a current employee that is confidential remains confidential upon and following his or her separation from the City.

The Police Chief is allowed to segregate personal information about any *undercover* police officer or member of his or her immediate family. The Chief may refuse to release such information if he or she reasonably believes it may endanger the officer or the officer's family. The Chief or his or her designee must make the determination when a request to inspect includes personal information about the

officer. The Chief should consider the totality of the circumstances and decide what of the personal information should be redacted and what should be released. If the Chief decides to withhold any information, he or she must give specific justification in writing to the requestor within two days and release the redacted file. If the Chief decides there is no justification for keeping the personal information confidential, the officer must be notified and given three (3) days to oppose release. When the request is from a business entity, it must also include the name and contact information for a supervisor for verification.

COSTS OF INSPECTION

Generally, there is no charge for the inspection of public records. However, where the public records requested are electronic records, and the records are not in the format requested by the requestor and special computer programs must be created to retrieve the records in the requested format, the Department Director shall estimate the cost of creating the programs, including the time and labor of town employees based upon their hourly pay rate, but not counting Social Security, insurance, and other benefits. The requestor shall pay to the City the estimated cost of the special programs before the records are compiled in the requested format. If the cost of the special program exceeds the amount previously paid by the requestor, he or she shall pay the balance to the City prior to the inspection of the records in the requested format. If the cost of the special programs is less than the amount previously paid by the requestor, the City shall refund to the requestor the difference upon the delivery of the records for inspection.

PROCEDURE FOR COPYING PUBLIC RECORDS

Any requestor who has submitted to the City a request for records is entitled to a copy of any record open for inspection. To the extent possible copies shall be made on the City’s copying equipment. Where the equipment does not exist, is inoperative, is not designed to copy the records requested, or the requestor wants the copies in a format the City’s equipment cannot duplicate, the copies may be made on commercial copying equipment at a vendor designated by the City. The City does not permit requestors to copy records using their own equipment. Further, all copying of public records that is done on the City’s copying equipment must be performed by employees of the City.

No open public records may be removed from the City office for the purpose of copying, unless by a City employee. If the public records requested are frail due to age or other conditions, and copying the records will cause damage to the original records, the requesting party may be required to make an appointment for inspection.

COST OF COPIES FOR GENERAL PUBLIC—CITY’S EQUIPMENT

Requestor must pay a per page cost for copies of records. The charge for copies shall be:

Letter and Legal (Black and White)	\$0.15/page
Letter and Legal (Color)	\$0.50/page
11 x 17 (Black and White)	\$0.35/page
11 x 17 (Color)	\$2.50/page
Color printing/plotting (including zoning and planning maps, engineering plans, etc.)	\$2.00/square foot
CD/DVD	\$1.00

Files that are able to be emailed may be provided at no cost for the copy (costs for labor shall still accrue as provided below). Electronic files shall not be provided in any modifiable form to a requestor.

Payment for the cost of copies shall be made by the requestor before the copies are made. The payment shall be based on the approximate number of copies requested. If the actual cost of the copies exceeds the amount previously paid by the requestor, the balance shall be paid by the requestor before the delivery of the copies. If the previous payment made by the requestor exceeds the cost of the copies, the excess shall be refunded to the requestor upon the delivery of the copies. In order to save administrative costs of processing the transaction, any copying cost that is less than \$1.00 shall be waived.

LABOR COSTS

There shall be no labor costs for fulfilling requests for inspection of records. Requests for copies requiring less than one hour of municipal employee labor for research, retrieval and duplication is free to the requestor. Labor in excess of one hour may be charged by the City, in addition to the cost per copy. The City shall require payment in advance of producing voluminous records. Requests for copies of records may not be broken down to multiple requests for the same information in order to qualify for the first free hour. For requests requiring more than one employee to complete, labor charges will be assessed based on the following formula:

In calculating the charge for labor, a Department Director shall determine the number of hours each employee spent producing a request, and provide the Open Records Coordinator with that information. The Open Records Coordinator shall then subtract the one (1) hour threshold from the number of hours the highest paid employee(s) spent producing the request. The Open Records Coordinator will then multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage. The wage should not include benefits. Finally, the Open Records Coordinator will add together the totals for all the employees involved in the request and that will be the total amount of labor that can be charged.

In the event a requestor, after viewing voluminous records requested for inspection, decides to request copies of a portion of those records, the labor cost shall be calculated in proportion to the amount of records requested for copying.

FREQUENT AND MULTIPLE REQUESTS

For purposes of this policy, during each calendar month the Open Records Coordinator may aggregate the number of requests for copies made per requestor. When the total number of requests made to the City (even if the requests are made to different department of the City) by a requestor within a calendar month exceeds four (4), a records custodian may begin to charge the requestor for any and all labor that is reasonably necessary to produce the copies of the requested records after informing the requestor that the aggregation limit has been met. Request for items that are routinely released and readily accessible, such as agendas for current calendar month meetings and approved minutes from meetings held in the previous calendar month, are exempt from this policy. Additionally, a records custodian may aggregate the total number of public records requests made by a requestor and by any other individual, if the records custodian reasonably believes the requestor to be acting in concert with or as the agent of another person, entity or organization. A records custodian choosing to aggregate requests by multiple requestors must inform the requestors of the determination to aggregate and that they have the right to appeal the decision to aggregate to the Office of Open Records Counsel. When aggregating the labor of multiple requestors, the records custodian must file a Notice of Aggregation of Multiple Requestors with the Office of Open Records Counsel

COST OF COPIES FOR GENERAL PUBLIC—COMMERCIAL EQUIPMENT

Where the City's copying equipment is incapable of reproducing copies of the records requested, or its copying equipment is inoperative, the Open Records Coordinator shall notify the requestor. If the requestor decides that he or she wants a commercially made copy of the records, he or she shall notify the Open Records Coordinator, who shall determine the estimated cost of the copies. If the requestor desires to obtain the commercial copies, he or she shall pay the estimated cost of the copies. If the actual cost of the copies exceeds the amount previously paid by the requestor, the balance shall be paid by the requestor before the delivery of the copies. If the previous payment made by the requestor exceeds the cost of the copies, the excess will be refunded to the requestor upon the delivery of the copies.

NOTIFICATION TO EMPLOYEES

When a request is made for personnel records of a current employee of the City, the Open Records Coordinator shall ensure that the employee is notified within three days of the request. When the request is for the personnel records of a current law enforcement officer, the notice must include the name, address, and telephone number of the person making the inspection, for whom the inspection was made, and the date of the inspection, and the notice should go to the Police Chief as well as the employee.