ORDINANCE NO. 014-14

AN ORDINANCE OF THE CITY OF PORT ORCHARD,
KITSAP, COUNTY WASHINGTON, AMENDING PORT
ORCHARD MUNICIPAL CODE CHAPTER 1.18 “PUBLIC
RECORDS REQUESTS”

WHEREAS, pursuant to the Public Records Act ("Act"), codified at Ch. 42.56
RCW, the Washington Legislature requires that each local agency shall provide rules of
procedure for the guidance of the public in making requests for inspection or copying of public
records; and

WHEREAS, pursuant to the Act, a local agency shall appoint and publicly
identify a public records officer whose responsibility is to serve as a point of contact for
members of the public in requesting disclosure of public records and to oversee the agency’s
compliance with the public records disclosure requirements of the Act; and

WHEREAS, the Washington Legislature directed the Attorney General of
Washington to adopt advisory model rules ("model rules"), now codified at Ch. 44-14 WAC, on
public records compliance in order to provide information to records requestors and state and
local agencies about “best practices” for complying with the Act; and

WHEREAS, the model rules were designed to be easily adopted, with or without
modification as deemed necessary or prudent by a local agency for its use in providing guidance
to requestors for inspection or copying of public records; and

WHEREAS, the City Council of the City of Port Orchard has reviewed the model
rules and desires to adopt them with modification pertaining to the practices and policies of the
City of Port Orchard;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PORT
ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: The following section of the City of Port Orchard Municipal Code is hereby
amended to read as follows:

Chapter 1.18
Public Records Requests

Sections:
1.18.010 Authority and Purpose
1.18.020 Location of City hall; Contact information; Public records officer appointed.
1.18.030 Availability of public records.
1.18.040 Processing of public records requests; General.
1.18.050 Processing of public records requests; Electronic records.
1.18.060 Exemptions.
1.18.070 Costs of providing copies of public records.
1.18.080 Review of denials of public records.

Section 2. Section 1.18.010 is hereby added to Chapter 1.18 as follows:

1.18.010 Authority and purpose.

(1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include 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 the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempt or prohibits the disclosure of public records held by that agency.

(2) The purpose of this chapter is to establish the procedures the City of Port Orchard will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the City of Port Orchard and establish processes for both requestors and City of Port Orchard staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the City of Port Orchard will be guided by the provisions of the act describing its purposes and interpretation.

(4) The provisions of this Chapter shall not apply to Court files and judges' files maintained by the Port Orchard Municipal Court in connection to judicial proceedings. Access to these records is governed by court rules and common law.

(5) The provisions of this Chapter shall not be construed to create any additional legal obligations upon the City or an independent cause of action against the City.

Section 3. Section 1.18.020 is hereby added to Chapter 1.18 as follows:

1.18.020 Location of Port Orchard City hall; Contact information; Public records officer appointed.

(1) Port Orchard City hall is located at: 216 Prospect Street, Port Orchard, WA 98366.
(2) 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 City Clerk is hereby designated as the public records officer for the City of Port Orchard. The Mayor may, in his or her discretion, assign additional staff and/or the City Attorney to assist the City Clerk in responding to public records requests. Requests for records maintained by the Port Orchard Police Department will be processed by the Police Department. The City Clerk will assist the Police Department as necessary.

(3) Public records requests relating to the records of the Port Orchard Police Department should be delivered to:

Public Records Officer: Port Orchard Police Department
546 Bay Street
Port Orchard, WA 98366
Phone (360) 876-1700
Fax (360) 876-5546

All other requests for access to the public records of the City of Port Orchard (or when seeking assistance in making such a request) should be delivered to the public records officer of the City of Port Orchard:

Public Records Officer: Port Orchard City Clerk
City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366
Phone (360) 876-4407
Fax (360) 895-9029

(4) The public records officer will oversee compliance with the act but another employee or the City Attorney may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the City will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the City.

Section 4. Section 1.18.030 is hereby added to Chapter 1.18 as follows:

1.18.030 Availability of public records.

(1) Hours for inspection of records. Pursuant to the provisions of POMC 1.18.040(6), once public records are available for inspection and copying, they shall be made available to the requestor during normal business hours of the City of Port Orchard, 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Records to be inspected must be viewed at the offices of the City of Port Orchard.

(2) Records index. The City of Port Orchard finds that maintaining an index is unduly burdensome and would interfere with City of Port Orchard operations. The requirement would unduly burden or interfere with City of Port Orchard, operations in the following ways: the magnitude and diversity of documents produced by City of Port Orchard departments and the employees within the departments, all utilizing their own
computers, has resulted in the creation of many different indexes as created by the computer user. The diversity in computer program applications utilized on each personal computer and the organization of documents created by those applications is impossible to organize into a single index. The performance of the City of Port Orchard overall mission does not allow for the addition to, or the revision or reassignment of duties for existing personnel so that a single index can be developed and maintained without hiring additional staff. Anticipated revenue, along with adopted priorities for expenditures does not allow for the hiring of additional staff whose job would be solely devoted to creating and maintaining a single, all-inclusive index.

(3) **Organization of records.** The City of Port Orchard will maintain its records in a reasonably organized manner. The City of Port Orchard will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original City of Port Orchard records from any of the City of Port Orchard’s offices.

(4) **Internet access to records.** Many records are also available on the City’s website. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

5) **Making a request for public records.** Any person wishing to inspect or copy public records of the City of Port Orchard should make the request in writing on the City of Port Orchard public records request form, by letter, fax, or e-mail addressed to the public records officer to include the information listed below:

(a) Name of requestor;
(b) Address of requestor, if applicable;
(c) Other contact information, including telephone number and/or e-mail address;
(d) Sufficient identification/description of the public records being sought;
(e) The date of the request; and
(f) Whether the requestor wishes to:
   (i) inspect the records (inspection of records is free of charge);
   (ii) have copies made of the records (cost charged to requestor);
   (iii) have the records copied to disc, if technically feasible (cost of disc charged to requestor);
   (iv) have the records scanned and provided via email or copied to disc (scanning cost and disc cost charged to requestor); or
   (v) have the records provided via email, if technically feasible (free of charge to requestor).

(6) **Request form.** A form for requesting public records is available for use by requestors at City Hall and online at the City’s website.

(7) Accepting public records requests. The public records officer or designee may accept requests for public records that contain the above information by telephone, fax, e-mail, mail services, or in person.

(8) Readily available public records. In the event the records requested in any department are readily available, of a routine nature, and do not involve the interest of any other person, the public records officer or designee may authorize the immediate
inspection and/or copying of such record without the necessity of filing the request as provided in section (4) above.

Section 5. Section 1.18.040 is hereby added to Chapter 1.18 as follows:

1.18.040 Processing of public records requests; General.

(1) Prompt Response. The public records officer or designee will process requests in the order allowing the most requests to be processed promptly and in the most efficient manner.

(2) Acknowledging receipt of request. Within five (5) business days of receipt of the request, the public records officer will acknowledge the request and do one or more of the following:

(a) Make the records available for inspection or copying;
(b) Provide an internet address and link on the city’s website to the specific records request, unless the requestor notifies the agency they cannot access the records through the internet, then the city must provide copies of the record;
(c) If copies are requested, provide the copies to the requestor after payment for the copies has been made by the requestor, or, if copies are being released in installments, after payment of a deposit is made pursuant to Section 1.18.070, herein;
(d) Provide a reasonable estimate of when records will be available for inspection or copying. Additional time needed 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;
(e) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available based on the clarification from the requestor. If the requestor fails to clarify the request, the City of Port Orchard need not respond to the request; or
(f) Deny the request.

(3) Consequences of failure to respond. If the City of Port Orchard does not respond in writing within five (5) business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.
(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. 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. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Privilege Log. If the City determines that a record is exempt and should be withheld, in whole or in part, the City will maintain a privilege log of those records. The privilege log will identify:
   a) Type of record withheld;
   b) Date of record;
   c) Number of pages;
   d) Author and/or recipient;
   e) The exemption invoked; and
   f) Brief explanation of the exemption.
A copy of the privilege log will be produced to the records requestor.

(7) Inspection of records. If a requestor seeks an opportunity to inspect public records, and once the records are available for inspection, the following provisions apply:
   (a) Consistent with other demands, the City of Port Orchard shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy. The public records officer or designee will be present when records are being inspected.
   (b) The requestor must claim or review the assembled records within thirty (30) days of the City of Port Orchard notification to him or her that the records are available for inspection or copying. The City will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the City to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day (30) period or make other arrangements, the City of Port Orchard may close the request and re-file the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(8) Providing copies of records. After inspection is complete, the public records officer or designee shall make any requested copies or arrange for copying.

(9) Providing records in installments. When the request is for a large number of records, the public records officer or designee 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, within thirty (30) days, the requestor fails to inspect either the entire set of records made available, or one or more of the installments made available, the public records officer or designee may stop searching for the remaining records and close the request.
(10) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the City of Port Orchard has completed a diligent search for the requested records and made any located nonexempt records available for inspection and/or copying.

(11) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the City of Port Orchard has closed the request.

(12) Later discovered documents. If, after the City of Port Orchard has informed the requestor that it has provided all available records, the City of Port Orchard becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and make the records available for inspection or copying.

(13) No duty to create records. The City is not obligated to create a new record in order to satisfy a request for records.

Section 6. Section 1.18.050 is hereby added to Chapter 1.18 as follows:

1.18.050 Processing of public records requests; Electronic records.

(1) Requesting electronic records. The process for requesting electronic public records is the same as the process for requesting paper public records.

(2) Providing electronic records. When a requestor requests records in an electronic format, if technically feasible, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the City of Port Orchard and is generally commercially available; or will provide the records in a format that is reasonably translatable from the format in which the agency keeps the record.

Section 7. Section 1.18.060 is hereby added to Chapter 1.18 as follows:

1.18.060 Exemptions.

(1) RCW 42.56, Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute "exempts or prohibits disclosure. Requestors should be aware of other exemptions, outside the Public Records Act, that restrict the availability of some documents held by the City for inspection and copying. A list of such laws is available at the office of the City Clerk and may be available at the City's website.

(2) The City of Port Orchard is prohibited by statute from disclosing lists of individuals for commercial purposes.
Section 8. Section 1.18.070 is hereby added to Chapter 1.18 as follows:

1.18.070 Costs of providing copies of public records.

(1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard 8 1/2 x 11 black and white photocopies for fifteen (.15) cents per page. If a request requires the use of a commercial copy service, including but not limited to large-copy projects, color copies, and over-sized copies, the costs for copies will be the actual cost of the copies charged by such outside vendor.

The public records officer or designee may require a deposit of up to ten (10) percent of the estimated costs of copying the records selected or requested. The public records officer or designee may also require payment in full of the remainder of the copying costs before providing all the records, after deducting any deposit paid. The public records officer or designee may request payment in full of the cost of copying an installment of records before providing that installment. The City of Port Orchard will not charge sales tax when copies of public records are reproduced at City hall; however, if copies must be sent to an outside vendor for copying, the cost of sales tax will be charged to the requestor.

(2) Costs for electronic records. The cost of providing electronic copies of records on a CD-ROM disc will be the actual cost. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) Costs of mailing. The City of Port Orchard may also charge actual costs of mailing, including the cost of a shipping container; and the actual cost of long distance fax transmission.

(4) Payment. Payment for the costs of records may be made by cash, check, or money order made payable to the City of Port Orchard.

(5) Other statutes govern charges for particular kinds of records. As examples, RCW 46.52.085 (charges for traffic accident reports); RCW 10.97.100 (copies of criminal histories); RCW 3.62.060 and .065 (charges for certain records maintained by courts).

(6) The City of Port Orchard has the discretion to waive copying charges for documents less than fifteen (15) pages or the cost of up to two (2) discs for administrative convenience per request.

Section 9. Section 1.18.080 is hereby added to Chapter 1.18 as follows:

1.18.080 Review of denials of public records.

(1) 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 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.

(2) Consideration of petition for review. The public records officer shall promptly
provide the petition and any other relevant information to the Port Orchard Mayor with a copy to the City Attorney. The Mayor will consider the petition and either affirm or reverse the denial within two business days following the City of Port Orchard’s receipt of the petition, or within such other time as the Mayor and the requestor mutually agree.

(3) Alternative Dispute Resolution. In the event of a dispute regarding the inspection or copying of public records, the parties shall first meet in a good faith attempt to resolve the dispute by agreement of the parties or by mediation. The mediators will be selected from an approved list maintained by the City and available upon request. The party wishing to seek mediation shall provide fifteen (15) days written notice to the City.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative review.

Section 10. Effective Date. This ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

Section 11. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the Clerk in authentication of such passage this 12th day of November 2014.

Timothy C. Matthes, Mayor

Brandy Rinearson, CMC, City Clerk

Carol Morris, Interim City Attorney

Bek Ashby, Councilmember