



**An ordinance establishing public access to records.**

Chapter 2019-06-11 Public Access to Records

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§ 2019-06-11-1 Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

**ACTUAL COST** The total cost of personnel including wages, fringe benefits, and all other benefits and overhead related to the time spent in search of records.

**AUTHORITY** Any of the following Village of Nelsonville entities having custody of a village record: an office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order, or a formally constituted subunit of the foregoing.

**CUSTODIAN** That officer, department head, division head, or employee of the village designated under § 2019-06-11-3 or otherwise responsible by law to keep and preserve any village records or file, deposit or keep such records in his or her office, or who is lawfully in possession or entitled to possession of such public records and who is required by this Chapter to respond to requests for access to such records.

**RECORD** Any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed, or printed pages, maps, charts, photographs, films, recordings, tapes, optical discs, and any other medium on which electronically generated or stored data is recorded or preserved. "Record" does not include drafts, notes, preliminary computations, and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials that are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent, or bequest; and published materials in the possession of an authority other than a public library that are available for sale, or that are available for inspection at a public library.

§ 2019-06-11-2 Duty to maintain records.

A. Each officer and employee of the village shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of the officer or employee or his or her deputies, or to the possession or control of which he or she or they may be lawfully entitled as such officers or employees.

B. Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his or her

successor all records then in his or her custody and the successor shall receipt therefor to the officer or employee, who shall file said receipt with the village clerk-treasurer. If a vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted for by the village clerk-treasurer, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

§ 2019-06-11-3 Legal custodians.

- A. Each elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate the village clerk-treasurer to act as the legal custodian.
- B. Unless provided in Subsection C, the village clerk-treasurer or the village clerk-treasurer's designee shall act as legal custodian for the village and for any committees, commissions, boards, or other authorities created by ordinance or resolution of the village board. The following offices or authorities shall have as a legal custodian of records the individual so named:

<b>Authority</b>	<b>Designated Legal Custodian</b>
General village records (including Board records)	Village Clerk-Treasurer
Joint Fire District	Fire Chief

- C. For every authority not specified in Subsections A and B, the authority's chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his or her staff to act as the legal custodian.
- D. Each legal custodian shall name a person to act as legal custodian in his or her absence or in the absence of his or her designee, and each legal custodian shall send notice of the designated deputy to the village clerk-treasurer.
- E. The village clerk-treasurer shall establish criteria for establishing the records system and shall cause the department/office records system to be reviewed on an annual basis.

§ 2019-06-11-4 Public access to records.

- A. Except as provided in § 2019-06-11-6 any person has a right to inspect a record and to make or receive a copy of any record as provided in § 19.35, Wis. Stats.
- B. Records will be available for inspection and copying during all regular office hours.
- C. If regular office hours are not maintained at the location where records are kept, the records will be available for inspection and copying upon at least 48 hours' advance notice of intent to inspect or copy.
- D. A requester shall be permitted to use facilities comparable to those available to village employees to inspect, copy or abstract a record.
- E. The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.
- F. A requester shall be charged a fee as indicated on the village rate schedule to defray the cost of copying records.
  - (1) If the form of a written record does not permit copying, the actual and necessary cost of photographing and photographic processing shall be charged according to the village rate schedule. In the alternative, if photocopying is done utilizing a commercial photocopy service, the cost of copying shall be the actual cost charged to the village by the commercial copying service.
  - (2) The actual full cost of providing a copy of other records not in printed form on paper, such as films, computer printouts and audio- and videotapes, shall be charged according to the village rate schedule.
  - (3) If mailing or shipping is necessary, the actual cost thereof shall also be charged according to the village rate schedule.

- (4) There shall be no charge for locating a record unless the actual cost thereof exceeds \$50, in which case the actual cost shall be determined by the legal custodian and billed to the requester.
- (5) The legal custodian shall estimate the cost of all applicable fees and shall require a cash deposit adequate to assure payment, if such estimate exceeds \$5.
- (6) Elected and appointed officials of the village shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.
- (7) The legal custodian may provide copies of a record without charge or at a reduced charge where he or she determines that waiver or reduction of the fee is in the public interest.
- G. Pursuant to § 19.34, Wis. Stats., and the guidelines therein listed, each authority shall adopt, prominently display, and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian from whom, and the methods whereby the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the village board.

§ 2019-06-11-5 Access procedures.

- A. A request to inspect or copy a record shall be made to the legal custodian. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under § 19.37, Wis. Stats. Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail, unless prepayment of a fee is required under § 2019-06-11-4F. A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.
- B. Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor. If the legal custodian, after conferring with the village attorney, determines that a written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his request in a manner which would permit reasonable compliance.
- C. A request for a record may be denied as provided in § 2019-06-11-6. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons for denying the request is made by the requester within five business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. Every written denial of a request shall inform the requester that, if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under § 19.37(1), Wis. Stats., or upon application to the attorney general or a district attorney.

§ 2019-06-11-6 Limitations on right to access.

- A. As provided in § 19.36, Wis. Stats., the following records are exempt from inspection under this Chapter:
- (1) Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law;
  - (2) Any record relating to investigative information obtained for law enforcement purposes if federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state;
  - (3) Computer programs and files, although the material used as input for a computer program/file or the material produced as a product of the computer program is subject to inspection; and

(4) A record or portion of a record containing information qualifying as a "trade secret" as defined in § 134.90(1)(c), Wis. Stats.

B. As provided by § 43.30, Wis. Stats., public library circulation records are exempt from inspection under this section.


C. In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the village attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, the following:

- (1) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.
- (2) Pursuant to § 19.85(1)(a), Wis. Stats., records of current deliberations after a quasi-judicial hearing.
- (3) Pursuant to § 19.85(1)(b) and (c), Wis. Stats., records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance, or discipline of any village officer or employee, or the investigation of charges against a village officer or employee, unless such officer or employee consents to such disclosure.
- (4) Pursuant to § 19.85(1)(d), Wis. Stats., records concerning current strategy for crime detection or prevention.
- (5) Pursuant to § 19.85(1)(e), Wis. Stats., records of current deliberations or negotiations on the purchase of village property, investing of village funds, or other village business whenever competitive or bargaining reasons require nondisclosure.
- (6) Pursuant to § 19.85(1)(f), Wis. Stats., financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such history or data.
- (7) Pursuant to § 19.85(1)(g), Wis. Stats., communications between legal counsel for the village and any officer, agent or employee of the village, when advice is being rendered concerning strategy with respect to current litigation in which the village or any of its officers, agents or employees is or is likely to become involved, or communications which are privileged under § 905.03, Wis. Stats.
- (8) Pursuant to § 19.85(1)(h), Wis. Stats., requests for confidential written advice from an ethics board, and records of advice given by such ethics board on such requests.

D. If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the village attorney prior to releasing any such record and shall follow the guidance of the village attorney when separating out the exempt material. If, in the judgment of the custodian and the village attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

Adopted on this 11<sup>th</sup> day of June, 2019.

Signed:   
Josh Stolzenburg, Village President

Signed:   
Lisa Anderson, Clerk/Treasurer