

## **VILLAGE OF CUYAHOGA HEIGHTS PUBLIC RECORDS POLICY**

### **Introduction:**

It is the policy of the Village of Cuyahoga Heights (the "Village") that openness leads to a better informed citizenry, which leads to better government and better public policy. It is the policy of Village to strictly adhere to the state's Public Records Act. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code. If the request is in writing, the explanation must also be in writing.

### **Section 1. Public records**

The Village, in accordance with the Ohio Revised Code, defines records as including the following: Any document – paper, electronic (including, but not limited to, e-mail), or other format – that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. All records of the Village are public unless they are specifically exempt from disclosure under the Ohio Revised Code.

#### **Section 1.1**

It is the policy of the Village that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying (See Section 4 for the e-mail record policy). Record retention schedules are to be updated regularly and posted prominently.

### **Section 2. Record requests**

Each request for public records should be evaluated for a response using the following guidelines:

#### **Section 2.1**

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If it is not clear what records are being sought, the records custodian must contact the requester for clarification, and should assist the requestor in revising the request by informing the requestor of the manner in which the office keeps its records.

## **Section 2.2**

The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. It is the Village's general policy that this information is not to be requested.

## **Section 2.3**

Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

## **Section 2.4**

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes (both in draft and final form), budgets, salary information, forms and applications, personnel rosters, etc. If fewer than 20 pages of copies are requested or if the records are readily available in an electronic format that can be e-mailed or downloaded easily, these should be made as quickly as the equipment allows.

All requests for public records must either be satisfied (see Section 2.4) or be acknowledged in writing by the Village within three business days following the Village's receipt of the request. If a request is deemed significantly beyond "routine," such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include the following:

**Section 2.4a** – An estimated number of business days it will take to satisfy the request.

**Section 2.4b** – An estimated cost if copies are requested.

**Section 2.4c** – Any items within the request that may be exempt from disclosure.

## **Section 2.5**

Any denial of public records requested must include an explanation, including legal authority. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

### **Section 3. Costs for Public Records**

Those seeking public records will be charged only the actual cost of making copies.

**Section 3.1** The charge for paper copies is 5 cents per page.

**Section 3.2** The charge for downloaded computer files to a compact disc is \$1 per disc.

**Section 3.3** There is no charge for documents e-mailed.

### **Section 3.4**

Requesters may ask that documents be mailed to them. They will be charged the actual cost of the postage and mailing supplies.

### **Section 4. E-mail**

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. E-mail is to be treated in the same fashion as records in other formats and should follow the same retention schedules.

**Section 4.1** – Records in private e-mail accounts used to conduct public business are subject to disclosure, and all employees or representatives of the Village are instructed to retain their e-mails that relate to public business (see Section 1 Public Records) and to copy them to their business e-mail accounts and/or to the office's records custodian.

**Section 4.2** – The records custodian is to treat the e-mails from private accounts as records of the Village, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

### **Section 5. Failure to respond to a public records request**

The Village recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the Village's failure to comply with a request may result in a court ordering the Village to comply with the law and to pay the requester attorney's fees and damages.

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RESOLUTION NO. 2007-153

BY: CONTIPELLI, DUSZYNSKI, FARAGONE, HENLEY, SCHOEFFLER AND UNGER

A RESOLUTION ADOPTING A MISSION STATEMENT, STATEMENT OF PRINCIPLES  
FOR PUBLIC RECORDS AND ADOPTING A PUBLIC RECORDS POLICY AND  
DECLARING AN EMERGENCY.

- WHEREAS: Pursuant to Sub. H.B. 9 that was passed by the 126<sup>th</sup> General Assembly municipal corporations are required to adopt a public records policy, mission statement and statement of principles.
- WHEREAS: THE COUNCIL OF THE VILLAGE OF CUYAHOGA HEIGHTS HEREBY RESOLVES:
- SECTION 1: That consistent with the premise that government at all levels exists first and foremost to serve the interests of the people, it is the Village's mission and intent to at all times fully comply with and abide by both the spirit and the letter of Ohio's Open Records Act and Open Meetings Acts (the "Acts").
- SECTION 2: That all Village personnel will become and remain fully trained in and aware of the provision of the Acts.
- SECTION 3: That Village employees are encouraged to immediately report incidents of non-compliance with the Acts that they may observe.
- SECTION 4: That the Village will do nothing that abridges the public's right to obtain information about their government or that inhibits or discourages citizens from doing so.
- SECTION 5: That the Village will do everything possible to aid those who are seeking information, including but not limited to, fully explaining the scope and operation of the Acts and assisting citizens in the formulation of requests.
- SECTION 6: That the Village will construe the provisions of the Acts in a manner that favors compliance with requests for information.
- SECTION 7: That the Village will seek guidance from the Office of the Ohio Attorney General whenever a question arises about the application of the Acts or about the appropriateness of a request for information.
- SECTION 8: That the Village will clearly and concisely state the reason or reasons why a request for information has been denied.
- SECTION 9: That the Village of Cuyahoga Heights Public Records Policy, attached hereto as "Exhibit A", is hereby adopted.

SECTION 10: This Resolution is declared to be an emergency necessary for the preservation of the public peace, safety, health and welfare of the citizens of the Village of Cuyahoga Heights. It shall therefore become effective upon its passage by the affirmative vote of not less than six (6) members of Council and approval of the Mayor; otherwise, it shall become effective at the earliest time allowed by law.

PASSED: September 12, 2007

EFFECTIVE: September 12, 2007

ATTEST:

APPROVED: *Paul E. Canty*  
Mayor

*Paul E. Canty*  
Mayor and President of Council

ON: September 12, 2007-09-17

*Barbara Ann Burr*  
Clerk of Council

I, the undersigned, Clerk of Council, Village of Cuyahoga Heights, do hereby certify there is no newspaper published or having the office of Publications in said Village and that I published the foregoing Resolution by posting same in four places, Village Hall, Police Department, Fire Department and Service Department in the said Village, as defined by Ordinance of the Council for a period of ten (10) days beginning September 14, 2007.

*Barbara Ann Burr*  
Clerk of Council

# The Ohio Public Records Act

## Chapter Two: Public Records Defined

### Delivery:

- Wait for advance payment of costs<sup>108</sup>
- Deliver copies, or schedule inspection<sup>109</sup>

The Ohio Supreme Court has held that “no pleading of too much expense, or too much time involved, or too much interference with normal duties, can be used by the respondent to evade the public’s right to inspect and obtain a copy of public records within a reasonable time.”<sup>110</sup>

### 4. Inspection at No Cost During Regular Business Hours

A public office must make its public records available for inspection at all reasonable times during regular business hours.<sup>111</sup> “Regular business hours” means established business hours.<sup>112</sup> Where a public office operates 24 hours a day, such as a police department, the office may adopt hours that approximate normal administrative hours during which inspection may be accomplished.<sup>113</sup> Public offices may not charge requesters for inspection of public records.<sup>114</sup>

### 5. Copies and Delivery or Transmission, “At Cost”<sup>115</sup>

A public office may charge costs for copies and for delivery or transmission, and may require payment of both costs in advance.<sup>116</sup> “At cost” includes only the actual costs of supplies used to make the copies<sup>117</sup> and for postage, packaging supplies, and other actual costs of the method of delivery or transmission chosen by the requester.<sup>118</sup> The cost of employee time cannot be included in the cost of copies or delivery.<sup>119</sup> One appellate court has held that a public office may choose to employ the services, and charge the requester the costs of, a private contractor to copy public records so long as the decision to do so is reasonable.<sup>120</sup>

Where a statute sets the cost of certain records or for certain requesters, the specific takes precedence over the general,<sup>121</sup> and the requester must pay the cost set by the statute.<sup>122</sup> For example, because R.C. 2301.24 requires that parties to a common pleas court action must pay court reporters the compensation rate set by the judges for court transcripts, a requester who is a party to the action may not use 149.43(B)(1) to obtain copies of the transcript at the actual cost of duplication.<sup>123</sup> However, where a statute sets a fee for certified copies of an otherwise public record, and the requester does not request that the copies be certified, the office may only charge actual

<sup>107</sup> R.C. 149.43(B)(1), (B)(6)

<sup>108</sup> R.C. 149.43(B)(6), (B)(7).

<sup>109</sup> R.C. 149.43(B)(1).

<sup>110</sup> *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St. 3d 50, 53-54, 1998 Ohio 444 (1998).

<sup>111</sup> R.C. 149.43(B); *State ex rel. Toledo Blade Co v. Seneca County Bd. of Comm’rs*, 120 Ohio St. 3d 372, 382, 2008 Ohio 6253, at ¶37 (2008) (“The right of inspection, as opposed to the right to request copies, is not conditioned on the payment of any fee under R.C. 149.43.”).

<sup>112</sup> *State ex rel. Butler County Bar Ass’n v. Robb*, 62 Ohio App. 3d 298 (12th Dist. 1990).

<sup>113</sup> *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St. 3d 619, 1994 Ohio 5 (1994) (allowing records requests during all hours of the entire police department’s operations is unreasonable).

<sup>114</sup> *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St. 3d 619, 624, 1994 Ohio 5 (1994).

<sup>115</sup> R.C. 149.43(B)(1).

<sup>116</sup> R.C. 149.43(B)(6), (B)(7).

<sup>117</sup> R.C. 149.43(B)(1) (copies of public records must be made available “at cost”); *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St. 3d 619, 625, 1994 Ohio 5 (1994) (public office cannot charge \$5.00 for initial page of copies or for employee labor for responding to public records requests; can only charge “actual cost” of copies).

<sup>118</sup> R.C. 149.43(B)(7); *State ex rel. Call v. Fragale*, 104 Ohio St. 3d 276, 277, 2004 Ohio 6589, at ¶¶2-8 (2004).

<sup>119</sup> *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St. 3d 619, 626, 1994 Ohio 5 (1994).

<sup>120</sup> *State ex rel. Gibbs v. Concord Twp. Trustees*, 152 Ohio App. 3d 387, 394; 2003 Ohio 1586, at ¶31 (11th Dist. 2003).

<sup>121</sup> R.C. 1.51 (rules of statutory construction).

<sup>122</sup> *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 90, 2004 Ohio 4354, at ¶15 (2004).

<sup>123</sup> *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 92, 2004 Ohio 4354, at ¶15 (2004); For another example see R.C. 5502.12 (Dept. of Public Safety may charge \$4.00 for each accident report copy).