

Executive Order 2024-08

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1 st Agenda Date: _____	Hearing Date: _____		
	2 nd Agenda Date: _____		

All department items requiring Council approval must be submitted through the Mayor's Office.

Primary Details

Department	Contact Name	Email	Phone
Legal	Jack Blair	jblair@cityoftulsa.org	918-596-7717

Description (Subject)
Executive Order Establishing Open Records Policies and Procedures

Summary




Executive Order details and background information
This executive order updates the policies and procedures for compliance with the Oklahoma Open Records Act, including an updated fee schedule.

If this Executive Order amends, rescinds, repeals or supersedes a previous one please provide the following information:

Affected EO Number: 1995-04 and 2013-01

Amend Rescind Repeal Supersede

Approvals

Department:		Date: <u>11.18.20</u>
Legal:		Date: <u>11.18.24</u>
Board:		Date: _____
Mayor:		Date: <u>NOV 20 2024</u>
Other:		Date: _____

Processing Information for City Clerk's Office

Additional Routing and Processing Details

Office of the Mayor
City of Tulsa, Oklahoma

EXECUTIVE ORDER NO. 2024-08

AN EXECUTIVE ORDER ESTABLISHING POLICIES AND PROCEDURES GOVERNING THE CITY OF TULSA'S COMPLIANCE WITH THE OKLAHOMA OPEN RECORDS ACT AND REPEALING EXECUTIVE ORDERS 1995-04 AND 2013-01

Section 1. Purpose: The City of Tulsa's Amended Charter, Article XII, Section 16, provides that "[a]ll records of the city and of boards, authorities, and commissions shall be open to inspection by citizens as provided by the laws of Oklahoma." The Oklahoma Open Records Act, Title 51, Oklahoma Statutes §24A.1 *et seq* ("Open Records Act" or "Act") further provides: "The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power." (§24A.2.) Accordingly, the purpose of this Executive Order is to adhere to these mandates to provide the public prompt, reasonable access to the City's public records, and to establish reasonable procedures to protect the integrity and organization of the City's records, while preventing excessive disruptions of its essential functions.

Section 2. Statement of Policy: The City of Tulsa; any of its boards, commissions, or authorities created by the City Charter (collectively the "City"); and its officers, officials, and employees (collectively "Public Officials") will comply with the Oklahoma Open Records Act and other related federal and state laws. Subject to the Open Records Act's requirements, limitations, and/or exceptions, and those provided for in federal and other state laws, all records generated by or in the custody, control, or possession of Public Officials in connection with the transaction of public business, the expenditure of public funds, or the administration of public property, will be open for inspection, copying, and/or mechanical reproduction during regular business hours, *provided* that records subject to discretionary exemptions under the Act shall be managed according to the decision framework described in Appendix A.

Section 3. Appointment of Open Record and Record Retention Custodians.

- A. Every department and every board, commission, or authority created by the City Charter ("City Public Body"), shall designate in writing primary and secondary open record custodians, who are authorized to release its public records, and primary and secondary record retention custodians, who are charged with maintaining records according to the City of Tulsa's Records Retention Manual (collectively "Record Custodians"). Record Custodian appointments shall be sufficient in number to ensure that at least one authorized person is always available to release public records during regular business hours. Every City Public Body having parts of its public records at locations remote from its main administrative office shall post at each remote location a public notice identifying the location where its appointed Record Custodians are located for the purpose of releasing public records during regular business hours.

- B. The City Clerk (used throughout herein to mean any designee of the Office of the City Clerk) shall maintain a continually updated list of Record Custodians and shall organize and facilitate a network of all active Record Custodians for the purpose of establishing a forum for instruction and collaboration regarding record retention and open records issues.

Section 4. Open Record Requests.

- A. Intake.** Excluding requests for documents or records specifically prepared for public distribution by any City Public Body, all requests for City public records must be submitted to the appropriate open records portal available for such requests, provided that:

1. News media requests for City public records may be made to the City's designated Public Information Officers (PIOs), who will promptly enter the request into the appropriate open records portal;
2. If a requester does not have access to a computer with an internet connection, a request for City public records may be made in writing on a form provided by the City Clerk, and the City Clerk will promptly enter the request into the appropriate open records portal; and
3. If an open records portal is not available for requested records, a request for City public records may be made in writing on a form provided by the City Clerk.

B. Reasonable specificity.

1. All record requests must describe the records sought with reasonable specificity; that is, to a degree that the Record Custodian can be reasonably certain that the records produced for inspection, copying and/or mechanical reproduction are responsive to the request. Relevant considerations include whether the request:
 - a. Specifies at least a general time frame within which the requested records would have been created or transmitted;
 - b. Seeks identifiable records, rather than general information without any qualifiers or other specification; and/or
 - c. Includes search terms that are sufficiently specific that they do not generate an unreasonably large number of records (e.g. thousands of pages of emails).
2. The City Clerk or a Record Custodian may ask the requestor to clarify a request that is unreasonably vague, open-ended, or otherwise does not describe the requested record with reasonable specificity. If a request is not described with reasonable specificity after the City Clerk or Record Custodian has asked the requester to clarify the request, the request may be denied.

3. If the request is for electronic mail, text messages, or similar electronic communications, and if the request does not identify a date range of six months or less *and* either the originator, the recipient, or the general subject matter of the message, the City Clerk or Record Custodian will ask for clarification. Without more specific information, such open-ended searches, as well as the reviews and (if necessary) redactions they would necessitate, are presumed to cause excessive disruption to the City's essential functions.

Section 5. Processing Record Requests.

- A. Record Custodians will provide prompt, reasonable access to their open records. The processing of a record request, in all cases, must ensure the integrity and security of City records, and every request shall be processed in a manner which avoids excessive disruption of the essential functions of the office in which the records are maintained.
- B. The date and time when a request is submitted and the date and time when the requested records are produced should be noted in the appropriate open records portal or on the processed record request.
- C. Records Custodians will provide regular, timely updates on the status of request responses in the appropriate open records portal.
- D. Records Custodians will track all billable time, on the day the work is completed, in the appropriate open records portal.
- E. The City Clerk shall track the status of all pending requests and provide periodic reports on the status of requests to Record Custodians, the Mayor, and the City Attorney.

Section 6. Scope of Records Search. The responsibility of a Record Custodian shall include only those records maintained by the City Public Body responsible for the custodian's appointment. In no instance shall a Record Custodian be responsible for the production of records which are not subject to his/her authority. Record custodians receiving a misdirected record request seeking the production of records not under the custodian's control shall, if known by the custodian, inform the City Clerk and the requesting party the identity and location of the City department, office, board, authority or commission which is most likely to have the requested City records.

Section 7. Records in Storage. Records of any City department or City Public Body placed in either permanent or temporary storage shall remain the responsibility of the City department or City Public Body placing the records in storage.

Section 8. Computer Records. Any City department or City Public Body responsible for creating computer records or data files shall be responsible for administering the appropriate release of such records or files, notwithstanding the circumstance that they may be located within a centralized City record system or centralized City data storage file system.

Section 9. Fees for Records. This Order herewith adopts the schedule of Open Record Act fees appearing at Appendix B. No charge shall be assessed or collected for any City public record which was specifically prepared for public distribution. A copy of this fee schedule shall be posted online and made available in the City Clerk's office.


Section 10. Accountability for Funds. Record custodians shall be responsible for the collection of required fees and accountable for their deposit into an appropriate City registry, as follows:

- A. Record custodians collecting money at any office located within City Hall not having a secure cash depository approved by the Director of Finance shall deposit all collected money in excess of \$20.00 with the Treasury Division of the Finance Department on a daily basis.
- B. Record custodians collecting money at any office not located within City Hall and all Record Custodians in City Hall not making daily deposits as required by the preceding paragraph shall deposit all collected money with the Treasury Division of the Finance Department in accordance with written policy established by the custodian's appointing authority, which policy shall be approved in writing by the Director of Finance.

Section 11. Legal Questions. Any Record Custodian having a question concerning whether a requested document is a "public record" as defined by Oklahoma's Open Records Act or whether a record is otherwise exempt, or a question relating to the amount of the charge which should be collected pursuant to Appendix B to this order, is directed to contact the office of the City Attorney for guidance.

Section 12. Repeal. Executive Orders 1995-04 and 2013-01 are hereby repealed.

Section 13. Effective Date. This Order shall take effect immediately.



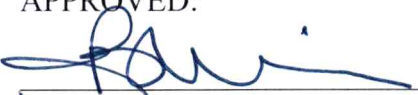
Mayor

ATTEST:


City Clerk

NOV 20 2024

Date

APPROVED:


City Attorney



APPENDIX A

DISCRETIONARY EXEMPTIONS – DECISION FRAMEWORK

Although some ORA exemptions are mandatory (i.e., require that a record shall not be disclosed), some are discretionary (i.e., provide that the city *may* withhold or release them). Aside from records related to the exercise of constitutional rights, all records subject to discretionary exemptions should be presumptively withheld unless disclosure is specially authorized by the designated authority. The details of this policy are summarized in the table below.

Discretionary Exemption Provision	Presumption (Disclosed or Withheld)	Approval Required for Exception to Presumption
Certain personnel records (§24A.7)	Withheld	Mayor (or Council Administrator or Auditor)*
Certain law enforcement records (§24A.8)	Withheld	Mayor
Personal notes (§24A.9)	Withheld	Public Official making the notes or the Mayor (or Council Administrator or Auditor)*
Certain information voluntarily disclosed to the public body that would give unfair advantage to business competitor (§24A.10(B))	Withheld	Mayor
Certain utility service provider contracts (§24A.10(d))	Withheld	Mayor
Certain library, archive, or museum materials donated, and donor identity (§24A.11)	Withheld	Mayor and donor
Litigation files & investigatory reports (§24A.12)	Withheld	City Attorney
Federal records if required by federal law (§24A.13)	Withheld	Mayor (disclosure presumably prohibited by federal law)
Personal communications related to exercise of constitutional rights (§24A.14)	Disclosed with redactions to protect identity of person exercising rights	Mayor (or Council Administrator or Auditor)*
Research Records (§24A.19)	Withheld	Mayor
Confidential information, e.g., information related to terrorism (§24A.28)	Withheld	Mayor

** Where the City Council or the City Auditor has exclusive custody and control of the records at issue, decisions regarding disclosure may be made by the Council Administrator or the Auditor, rather than the Mayor.*

APPENDIX B

**PUBLIC NOTICE OF CHARGES FOR REPRODUCTION OF CITY RECORDS
PURSUANT TO OPEN RECORDS POLICY OF CITY OF TULSA**

Except as otherwise provided by law, the following schedule of charges shall apply to records requests pursuant to the open records policy of the City of Tulsa and in compliance with Oklahoma’s Open Records Act, Title 51 Oklahoma Statutes, Section 24A.1 and following. This schedule of charges is posted in the public access area of the City Clerk’s Office, 2nd Floor of City Hall, and in the County Clerk’s Office. The type of record and the media on or through which it is provided is at each Department’s discretion. Payment of fees in advance of production may be required.

<u>STANDARD COSTS FOR PRODUCTION OF OPEN RECORDS REQUESTS</u>		
1.	Paper Reproduction	
	a. Legal sized or smaller (8.5 x 14” or smaller) – black and white	\$0.25 per page
	b. Legal sized or smaller (8.5 x 14” or smaller) – color	\$0.50 per page
	c. Ledger sized (11 x 17”)	\$0.50 per page
	d. Paper larger than 11 x 17”, microfilm, photographic paper, or other specialty papers	Actual cost of media and reproduction
2.	Digital Reproduction (scanned or electronically generated and processed for electronic delivery)	\$0.15 per page
3.	Flash, thumb or USB drive, external hard drive, memory card, or other media	Actual cost + \$5.00
4.	U.S. Mail or Other Shipping Service	Actual cost
5.	Certification	\$1.00 per page

<u>PRODUCTION FEES FOR COMMERCIAL REQUESTS OR REQUESTS INVOLVING EXCESSIVE DISRUPTION</u>	
These fees are in addition to the Standard Costs for Production above. Per-hour costs will be billed in one-minute increments. Pre-payment of costs may be required.	
“Excessive disruption” is defined as a request that requires more than one hour of employee or contractor work to compile and produce.	
1.	\$55.00 per hour
2.	\$80.00 per hour when computer programming is required on a customized request
3.	\$85.00 per hour when legal support or legal review is required
4.	\$50.00 per hour when redaction of audio or video is required

OPEN RECORDS POLICY F.A.Q.

Several key terms are not specifically defined in the Open Records Act. In the absence of clear definitions or case law interpreting specific provisions, this guidance is provided to assist in understanding the City's processes for handling these requests, which must necessarily be evaluated on a case-by-case basis.

The Open Records Act provides:

“if the request:

a. is solely for commercial purpose, or

b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying....”

What is a “commercial purpose”?

A commercial purpose advances the requester's financial or economic interests, as distinct from personal, educational, or non-profit interests. In other words, if the records request promotes or supports work for which the requester may be paid, it likely serves a commercial purpose. A request made for a commercial purpose would include a request for records, such as demographic information, economic data, geographic data, or statistics, with the intent of manipulating or packaging the data into a marketable format, offering the data for sale, or using the data to generate revenue.

What is “excessive disruption”?

A request will be presumed to cause excessive disruption if it requires more than one (1) hour of actual employee or contractor time to search, compile, and/or produce requested records for inspection. Search and copying costs will not be assessed for the first hour. For purposes of calculating excessive disruption, all pending requests from the same requester should be considered together.

The Act provides: *“In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.”*

Requests from news media and authors in the public interest may also serve commercial purposes, but such requests are nonetheless exempt from search fees (but not necessarily copying costs) under this provision of the Act. Whether a request falls within the terms of this exception must necessarily be determined on a case-by-case basis.

How do we define “news media” when anyone can disseminate information on social media?

“News media” does not mean a person who might post records only on personal social media sites, but rather:

(a) any entity that is in the regular business of news gathering and publishing or broadcasting news to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution; or

(b) any employee, agent, or contractor of any such entity, who is engaged in news gathering in that capacity (commonly a journalist).

How do we determine if a requestor is a “taxpayer seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants”?

This language is intentionally broad and should be applied to any city of Tulsa resident who is not making a commercial or strictly self-serving request. An example of a self-serving request might be a request for a record to support the requester’s insurance claim or case in litigation. If the requester’s intent is fairly debatable, Record Custodians should give the benefit of any doubt to the requester.