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May 20, 2019

Lakewood City Council  
Lakewood, Ohio

### **Re: Ordinance regarding public records**

Dear Colleagues,

Open government leads to a better-informed citizenry, greater public participation in government, better public policy, and more effective use of public resources. With this in mind we are proposing an Access to Public Records policy, to ensure the preservation and public accessibility of records.

Having a chapter of our code dedicated to public records would not make Lakewood unique, nor is it intended to invalidate the city's current records processes by which many in the community have been well served. In fact, an important objective of this proposed legislation is to maintain and reinforce important portions of the city's current Public Records Policy by codifying them into permanent law. Some of these include:

1. Not requiring requesters identify themselves and not making them give a reason for the request, as conditions to obtain public document.
2. Not limiting the number of requests made by any one individual.
3. Only charging for the cost to produce and mail requested documents.
4. Ensuring that requests can be made to any city employee, at any time, by any means.

New objectives of this proposed legislation include:

1. Create a public records request web portal that is easy to use, up to date and interactive that will allow the public to:
  - o Easily and quickly submit specific requests in one place.
  - o Allow for anonymity.
  - o Track requests in real time.
  - o Fulfill the request.
  - o Store all requests for review, reporting, and public search.

2. Two-day response time to initially respond to a request.
3. Strengthen provisions around redactions and exemptions, to make sure we are withholding only what is necessary.
4. Appointment of a city employee as Public Records Administrator.
5. Mandate public records training for top officials.
6. List types of records and information open to the public (non-exhaustive).

We intend that Lakewood city should strictly adhere to all its obligations under Ohio's Public Records Law, and to exceed those obligations whenever it is practical and makes sense to do so.

We are encouraged to see the city embracing technology like the city's mobile app, Police-2-Citizen web portal and the building department's soon-to-go-live Citizen Access program. An online public records access platform is a natural complement to the city's growing digital services. We look forward to discussing the following ordinance in the Rules & Ordinances Committee.

Move to receive and file.

Sincerely,



Tristan Rader  
Councilmember At-Large



Meghan F. George  
Councilmember At-Large

AN ORDINANCE enacting new Chapter 110, Access Public Records, of the Codified Ordinances of the City of Lakewood to create transparency and timely easy-of-access to public records and set requirements for the city’s online public records request system.

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-governance; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. New Chapter 110, Access Public Records, of the Codified Ordinances of the City of Lakewood, shall be enacted to read as follows:

**CHAPTER 110  
Access to Public Records**

<b>Sec 110.10</b>	<b>Definitions</b>
<b>Sec 110.20</b>	<b>Records available to the public</b>
<b>Sec 110.30</b>	<b>Public Records Administrator</b>
<b>Sec 110.40</b>	<b>Records Retention Schedules</b>
<b>Sec 110.50</b>	<b>Records Request</b>
<b>Sec 110.60</b>	<b>Payment for Records</b>
<b>Sec 110.70</b>	<b>Public Records Training</b>
<b>Sec 110.80</b>	<b>Administrative Policy</b>
<b>Sec 110.90</b>	<b>Penalty</b>

**110.10 DEFINITIONS**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) “Document” means any method of storing information, including but not limited to spoken words, handwriting, typewriting, printing, photostating, photographing and any other form of communication or reproduction, whether a draft or final copy, upon any medium, including but not limited to computer data, paper, magnetic or paper tape, photographic film or prints, magnetic or punched cards, discs, drums and phonographic records.

(b) “Public record” - means any document, device, or item, regardless of physical form or characteristic, including electronic records, created or received by or coming under the jurisdiction of any public office, which serves to document the organization, functions, policies, decisions, procedures, operation, or other activities of the office. All records which meet this definition are public records, unless exempted under section 149.43 of the Ohio Revised Code.

## **110.20 RECORDS AVAILABLE TO THE PUBLIC**

(a) Except as provided by other provisions of municipal, state or federal law, the municipality shall make all public records open to inspection by any person, subject to guidelines regulating the time, place and manner of inspection.

(b) The types of records and information open to public inspection pursuant to this chapter shall include but shall not be limited to the following:

(1) Financial and operational cost information, including information as to revenues, expenditures, indebtedness, departmental budget requests and formal departmental recommendations in regard to project priority.

(2) Information relating to contracts to which the municipality is a party, including payment provisions, information relating to bids and requests for proposals received or solicited by the municipality, and information relating to the status of goods or services furnished pursuant to contract.

(3) Regulatory, financial, assessment and tax information concerning real property located within the municipality.

(4) Salary levels and fringe benefits accorded municipal officers and employees by law, including information in regard to the pay range and step grade of an employee or officer, and statistical analyses or compilations relating to municipal practices and policies concerning compensation for various occupational groups, departments and divisions.

(5) Feasibility, management, cost effectiveness and similar reports prepared by the municipality or for the municipality under contract, whether in draft or final form, when such reports are prepared with municipal or other government monies.

(c) The City will maintain its records in a rational, coherent fashion, so as to comply with reasonable record requests.

(d) Redaction and removal of non-public information from requested documents shall be done in accordance with section 149.43 of the Ohio Revised Code. There shall be no redactions, removal of information or exempting of documents unless specifically allowed by or required by state or federal law. It shall be the policy of the City of Lakewood to construe those exemptions and exceptions in the most narrow possible manner.

(e) If a public records request is denied, in part or in whole, the public office shall provide the requestor with an explanation for the denial as provided for in Section 149.43(B)(3) of the Ohio Revised Code.

## **110.30 PUBLIC RECORDS ADMINISTRATOR**

(a) This city shall designate a Public Records Administrator who shall be responsible for the maintenance of the public records for the City of Lakewood and for handling public records requests.

(b) The Public Records Administrator shall be a full-time employee of the City of Lakewood.

(c) The Public Records Administrator shall take all necessary actions to procure the requested documents from the relevant Department(s), shall distribute the documents for review to the Law Department, when necessary, and shall then provide to the requesting party the documents, or an explanation as to the reasons of any denial. The Administrator shall follow up with the appropriate department which holds the records at that time on a daily basis, until the records are obtained and released to the requesting party. If the request is denied, in addition to the explanation of the denial, the Administrator shall provide a statement recommending how, if possible, a records request might be reframed to obtain information that falls within the scope of the Public Records laws of Ohio and the City of Lakewood. The Administrator shall work with the requesting party to try to determine the intent of the request, by disclosing how the City's records are kept and suggesting ways to reframe the request to obtain the information sought by the requestor. The Public Records Administrator is obligated to take all necessary actions to ensure optimal speed and thoroughness in responding to the public records request.

(d) The City shall list, on its website and in its directory, the physical location of the Public Records Administrator. The city shall also maintain hours of operation each day for a record request to be made and list those hours publicly.

#### **110.40 RECORDS RETENTION SCHEDULES**

Each department of the city shall have a records retention schedule in place, which shall specify, consistent with state law, the methods by which and the length of time that records shall be kept. Such schedule shall be kept on file by each public office as a public record and compiled in a central location in the public records portal. For any department that has a records retention schedule in place at the time that this chapter of the Lakewood Codified Ordinances becomes effective, that records retention schedule shall remain in effect until it is amended according to the procedure set forth in Section 149.38 of the Ohio Revised Code. Each department that does not have a records retention schedule in place at the time that this chapter becomes effective shall create a records retention schedule, in accordance with the procedure set forth in Section 149.38 of the Ohio Revised Code, not later than December 31, 2019.

#### **110.50 RECORDS REQUEST**

(a) Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity and specificity to allow the relevant public office to identify, retrieve, and review the records. Except as provided in 110.20 (B) The City may decline to create a record that contains the information requested if the record does not already exist, or to seek out and retrieve records that contain specific information that may be of interest to the requester.

- (1) If a requester makes an ambiguous or overly broad request or has difficulty in making a request and before a request is denied, the city shall encourage the requester to revise the request to be specific as possible in terms of which records are being sought, time frame when the records may have been created and/or other information that may help the city in locating the record and aid in fulfilling the request.
- (2) The requester is not required to know where a record is located or what time period a record was created. The City shall inform the requester

of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties to help the requester in clarifying their revise request. Requesting that the requester make clear and specific requests is only meant to aid in the timely fulfillment of requests in accordance with ORC 149.43(B)(2)

(b) Requests may be made through the online records request system, in person, by telephone, by email, or in writing. The City may not condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Should it facilitate a response or enhance the ability of the City to identify, locate, or deliver the public records sought by the requester, the City may inquire about the requester's identity and/or the intended use of the information requested. The City may do so, however, only after disclosing to the requester that a written request is not mandatory and that requesters may decline to reveal their identity or to provide information about the intended use of the requested information.

(c) The City of Lakewood shall implement a processed public records request system. This system shall perform the following functions:

(1) The processing of records requests by having one online (on the city website) location where any individual can submit a request for any public records they believe are in the city's possession, as well as a designated brick and mortar location in the Public Records Administrator's office for an individual to submit an in-person request anonymously, should the requester choose to be anonymous;

(2) Track requests in real time, including the time it takes to respond and fulfill the request;

(3) Allow direct two-way communication between the individual who submitted the request and the Public Records Administrator;

(4) Fulfill the request by delivering the requested material digitally through the same system;

(5) Save and store all requests, accessible to and searchable by the public and for review and reporting purposes, in accordance with the appropriate retention schedule.

(d) If a requester makes a public records request in person, via phone, email, or by any means other than the online system to any employee of the city, that employee is to either input the request into the online system, to track the request, or forward the request to the Public Records Administrator for input into the online system and further processing.

(e) Any employee who receives a public records request is encouraged to respond to the requester with requested public record(s) if said public record(s) are accessible by the employee and known by the employee to be public records. The public records request online system is not intended to hinder in any way any employee's ability to respond to and fulfil records requests.

(1) An employee of the city must immediately notify the Law Department for guidance if they:

(i) Are unsure if the information requested is a public record or may contain information that is exempt under the law;

(ii) Receive a records request from an attorney or in the form of a subpoena

(2) In all cases, a public records request is to be entered into the online request system for tracking upon receipt or shortly after fulfillment of the request. This may be done by any employee who received a request or by the Public Records Administrator.

(f) If a requester makes a request that is overly broad request or ambiguous such that the City cannot reasonably identify what public records are being requested, the City is to provide the requester with an opportunity to revise the request. In doing so, the City shall assist the requester by informing the requester of the manner in which the department keeps its records.

(g) Should a request not be considered “routine”, such as a request seeking a voluminous number of copies or requiring extensive research or review, the City department should, whenever practicable, follow-up with a response, within two (2) days, indicating that it is in receipt of the request and that responsive records will be made available for inspection or copied as soon as practicable.

(h) The City may not limit the number of public records requests that a single individual can make, nor limit the number of public records that will be made available during a fixed period of time.

(i) When a public records request is made to examine a personnel file, the City department will, to the extent practicable, notify the employee that his or her records have been requested and, if known, the name of the individual making the request. Any request for law enforcement or firefighter personnel records shall be immediately forwarded to the Law department for redaction pursuant to the applicable statute.

(j) The city shall make this system available to the public no later than one (1) month after the effective date of this ordinance and shall keep the system live and available to the public, with only the exception of necessary maintenance, in perpetuity.

(k) The city shall monitor all requests and respond to all requests with confirmation of receipt within two (2) regular business days of receipt. Business day shall be defined as any day that City Hall is open, i.e. Monday through Friday except holidays.

#### **110.60 PAYMENT FOR RECORDS**

(a) The City may require prepayment of costs associated with producing copies, including actual copying and mailing expenses. The City may only charge its actual costs of producing copies of the records.

(b) The city shall create, and update as needed a fee schedule to be used to assess the requester for actual cost of the production of records.

(c) This fee schedule shall be made publicly available on the city’s website and upon request.

#### **110.70 PUBLIC RECORDS TRAINING**

All elected public officials and the public records administrator shall attend training on public records policy approved by the Ohio Attorney General, as provided for in

Section 109.43 of the Ohio Revised Code. Each public office shall encourage other appropriate persons to receive public records training.

**110.80 ADMINISTRATIVE POLICY**

The city, at the discretion of the Mayor or the mayor’s designee, may develop policies to help guide the public access to records processes and to guide the implementation of the records request system, provided these polices do not in any way infringe upon, or conflict with this ordinance.

**110.90 PENALTY**

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such deliberation of the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Adopted: \_\_\_\_\_ PRESIDENT

\_\_\_\_\_  
CLERK

Approved: \_\_\_\_\_ MAYOR