



## TOWN OF WASHINGTON GROVE ACCESS TO PUBLIC RECORDS POLICY

**PURPOSE:** To set forth procedures under Maryland's Public Information Act for filing and processing requests to the Town of Washington Grove for the inspection and copying of public records of the Town. (Authority: State Government Article, §§10-611 through 10-628, Annotated Code of Maryland.)

### I. Policy.

It is the policy of the Town of Washington Grove to facilitate access to the public records of the Town, when access is allowed by law, by minimizing costs and time delays to applicants.

### II. Definitions.

- A. "Act" means the Public Information Act, State Government Article, §§10-611 through 10-628, Annotated Code of Maryland.
- B. "Applicant" means a person or governmental unit that asks to inspect a public record (§10-611(b) of the Act).
- C. "Town" means the Town of Washington Grove.
- D. "Town Clerk" means the Town Clerk of the Town of Washington Grove.
- E. "Official Custodian" means the person who is responsible for the maintenance, care, and keeping of the public records of the Town, whether or not such person has physical custody and control of a public record (See §10-611(d) of the Act).
- F. "Custodian" means: "Official Custodian."
- G. "Public record" means all papers, correspondence, email messages, forms, books, photographs, photostats, films, sound recordings, maps, drawings, or other written documents, regardless of physical form or characteristics. "Public records" includes all copies made or received by the Town in connection with the transaction of public business and includes the salaries of all employees of the Town.
- H. "Working day" means a day other than Saturday, Sunday or a Town holiday.

### III. Mayor as Official Custodian.

Unless otherwise provided by law, the Mayor is the Official Custodian of the public records of the Town of Washington Grove.

### IV. Who May Request Public Records.

Any person may request to inspect or copy public records of the Town of Washington Grove.

## V. Necessity for Written Request.

All requests for documents by an applicant must be in writing and submitted on the forms provided by the Town Clerk. The Custodian shall approve that public records are to be made available for inspection and/or copying by an applicant only after receipt of a written request. The Town Clerk shall maintain each public information request for a period of three (3) years. The Town Clerk shall assign each public information request a unique request number.

## VI. Contents of Written Request. A written request shall:

- A. Contain the date of the request and applicant's name, address, and telephone number; and
- B. Be signed by the applicant; and
- C. Reasonably identify, by brief description, the public record sought.

## VII. Filing Requests.

All request(s) to inspect or copy a public record of the Town shall be approved by the Custodian.

## VIII. Response to Request.

- A. If the Custodian approves a request for inspection, the Town Clerk shall produce the public record for inspection, or shall produce a copy of the record:
  - (1) Immediately; or
  - (2) Within a reasonable time period, not to exceed 30 days after the date of receipt of the request where such period of time is needed to retrieve the public record and conduct any necessary review.
- B. Requests for certain public records have been pre-approved by the Custodian, and the Town Clerk shall make them available for inspection and/or copying as specified in §VIII A above. These pre-approved public records are as follows:
  - (1) Town Charter, Code of Ordinances, Master Plans.
  - (2) Budgets approved at Town Meeting, Monthly Treasurer Reports, Annual Audit Reports.
  - (3) All approved Building Permit Applications, Subdivision Plats, Forest Conservation Plans, Zoning Maps, Local Map Amendments, and Sectional Map Amendments.
  - (4) Minutes of any "Open Meeting" held in Washington Grove of any "Public Body", such terms as specified by the Maryland Open Meetings Act.
  - (5) All reports, resolutions, ordinances, opinions, orders, rules, or other attachments to minutes that were received, reviewed, accepted, adopted, or approved at any aforementioned "Open Meeting".
- C. If the Custodian determines that the request must be denied, the Custodian shall do so within 30 days after the request.

- D. If a request is denied, the Custodian shall provide the applicant, at the time of the denial or within ten working days, a written statement that gives:
  - (1) The reasons for the denial; and
  - (2) The legal authority for the denial; and
  - (3) Notice of the remedies available for review of the denial.
- E. If a requested public record is not in the custody or control of the Town employee to whom application is made, that Town employee shall, within 10 working days after receipt of the request, notify the applicant:
  - (1) That the Town employee does not have custody or control of the requested public record; and
  - (2) If the Town employee knows:
    - (a) The name of the Custodian of the public record; and
    - (b) The location or possible location of the public record.
- F. With the consent of the applicant, any time limit imposed by §VIII A through E above may be extended for an additional period of up to 30 days.

IX. Required Denials; Non-Disclosure by Law.

Certain public records shall not be open to inspection or copying by the public. These required denials and exceptions to them are described in the Act at §§10-615 through 617. The Custodian shall deny inspection of the following types of documents:

- A. Documents which are privileged or confidential by law (§10-615(1));
- B. Documents which are not subject to disclosure by state statute, federal statute or regulation, rules adopted by the Maryland Court of Appeals, or an Order of a court of record (§10-615(2));
- C. Adoption records (§10-616(b));
- D. Welfare records (§10-616(c));
- E. Letter of reference (§10-616(d));
- F. Circulation records of a library (§10-616(e));
- G. Records which are a result of a gift to the Town and the gift was conditioned on limited access (§10-616(f));
- H. Retirement Records, except by the person in interest; the appointing authority of the individual; after the death of the individual, by a beneficiary, personal representative, or other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual; or by any law enforcement agency in order to obtain the home address of a retired employee of the agency when contact with a retired employee is documented to be necessary for official agency business (§10-616(g));
- I. Certain police records and criminal charging documents requested by or on behalf of attorneys, not the attorney of record, for the purpose of soliciting or marketing legal services (§10-616(h));

- J. Personnel Records (except salary/wage information of Town employees) except by the person in interest; or an elected or appointed official who supervises the work of the individual (§10-616(i));
- K. Hospital Records (§10-616(j));
- L. Student Records, except by a person in interest; or an elected or appointed official who supervises the student (§10-616(k));
- M. Medical and psychological information, except a person in interest to the extent permitted by §4-302 of the Health-General Article of the Annotated Code of Maryland (§10-617(b) & (c));
- N. Confidential business information include trade secrets, confidential financial information, confidential commercial information, or confidential geological and geophysical information (§10-617(d)). Note: Confidentiality of documents is a legal determination and is not necessarily determined by the person in interest.
- O. Home address and phone numbers of Town employees, unless the employee gives permission for the disclosure or the Town determines that the public interest is served by the disclosure (§10-617(e));
- P. Financial information of individuals (except salaries of Town employees), unless the applicant is a person in interest (§10-617(f));
- Q. Computer systems security information (§10-617(g));
- R. Occupational or professional licensing information, except public access shall be permitted for the following information: (1) the name of the licensee; (2) the business address of the licensee or if the business address is not available, the home address; (3) the business telephone number of the licensee; (4) the educational and occupational background of the licensee; (5) the professional qualifications of the licensee; (6) any orders and findings that result from formal disciplinary actions; and (7) any evidence that has been provided to the Custodian to meet the requirements of a statute as to financial responsibility. The person in interest shall have full access to occupational or professional licensing information (§10-617(i)).

X. Discretionary Denials.

Access to inspection and copying of certain documents may be denied by the Custodian. These documents are described in the Act at §10-618. The Custodian may deny inspection of the following types of documents if releasing them would be contrary to the public interest:

- A. Interagency or intra-agency documents which would not be available by law to a party in litigation with the unit (§10-618(b));
- B. Test questions, scoring keys and other examination information that relates to the administration of licenses, employment or academic matters except a person in interest shall be allowed to inspect the examination after it has been given and graded. The person in interest will not be allowed to copy or otherwise reproduce the examination (§10-618));
- C. Documents which contain specific details of an on-going research project that an institution of the State or of a political subdivision is conducting, except documents that provide only the name, title, expenditures, and date when the final project summary shall be available for inspection and copying (§10-618(d));

- D. Real estate appraisals for property not yet acquired by the Town, except the appraisal shall be provided to the owner of the property (§10-618(e));
- E. Records of investigations conducted by the Attorney General, State's Attorney, Town or County Attorney, a police department, or a sheriff; an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; and records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a Town or County Attorney, a police department, a State or local correctional facility, or a sheriff (§10-618(f)); and a discretionary denial for one of the above stated reasons may only be exercised if the Custodian finds that inspection of the document would lead to one of the following results:
  - (1) Interference with a valid and proper law enforcement proceeding;
  - (2) Deprivation of the right to a fair trial or impartial hearing for a person in interest;
  - (3) An unwarranted invasion of privacy;
  - (4) Disclosure of the identity of a confidential source;
  - (5) Disclosure of an investigative technique or procedure;
  - (6) Prejudice to an investigation; or
  - (7) Danger to the life or physical safety of an individual.
- F. Site-specific information on endangered or threatened species of plant or animal, a species of plant or animal in need of conservation, historic property as defined in Article 83B, §5-601(k) of the Annotated Code of Maryland, except that the Custodian shall not deny inspection to the owner of the land upon which the resource is located or any entity that could take the land through the right of eminent domain (§10-618(g)).

XI. Partially Denied Documents.

If a requested record contains information, access to which is denied under this Access to Public Records Policy and the Act, in addition to information which is not denied, then the document shall be redacted by the Custodian. The denied information shall be redacted from the document, and the redacted document shall be provided along with a denial letter in accordance with §VIII D above regarding that portion of the record which was denied.

XII. Notice to and Consideration of Views of Persons Potentially Affected by Disclosure.

- A. Unless prohibited by law, the Custodian may provide written notice of a request for inspection or copying of any public record of the Town to any person who, in the judgment of the Custodian, could be adversely affected by disclosure of that public record.
- B. The Custodian may consider the views of the potentially affected person before deciding whether to disclose the public record to an applicant.

XIII. Public Record Temporarily Unavailable.

If access to a requested public document has been granted by the Custodian, but the record is not immediately available for inspection or copying, the Custodian shall promptly:

- A. Notify the applicant that the public record is not immediately available; and
- B. Schedule a date within a reasonable time for inspection or copying.

#### XIV. Public Record Destroyed or Lost.

If a requested public record has been destroyed or lost, the Custodian shall promptly:

- A. Notify the applicant that the public record is not available; and
- B. Explain the reasons why the public record cannot be produced.

#### XV. Documents Are Not Required to be Created.

The Maryland Public Information Act does not require the Town to create a document which does not exist. If, however, through the normal course of events, the requested documents are created in the future, an additional request is required to access the documents. If the document does not exist, the applicant will be notified in writing within ten (10) working days of receipt of the request.

#### XVI. Judicial Review of Denial.

An applicant who is denied inspection of a public record may file a complaint in the Circuit Court for Montgomery County in accordance with §10-623 of the Act.

#### XVII. Disclosure Against Public Interest.

##### A. Denial Pending Court Order.

- (1) If, in the opinion of the Custodian, disclosure of a public record of the Town otherwise subject to disclosure under the Act would do substantial injury to the public interest, the Custodian may temporarily deny the request to obtain a court order allowing non-disclosure.
- (2) The temporary denial shall be in writing.

##### B. Circuit Court Review.

- (1) Within ten (10) working days after the denial, the Custodian shall apply to the Circuit Court for Montgomery County for an order permitting continued denial or restriction of access.
- (2) Notice of the Custodian's complaint shall be served on the applicant in the manner provided for service of process by the Maryland Rules of Procedure.

#### XVIII. Fees.

- A. The fee schedule for copying and certifying copies of public records of the Town is as follows:
  - (1) Copies.

- (a) The fee for each copy made by a photocopying machine within the Town is \$0.25 cents per page.
  - (b) The fee for each copy made otherwise shall be based on the actual cost of reproduction.
- (2) Certification of Copies. If a person requests that a copy of a public record be certified as a true copy, an additional fee of \$1.00 per page shall be charged.
- (3) Minimum Fee. No charge will be made if the total fee is \$1.00 or less.
- B. Notwithstanding §XVIII A above, if the fee for copies or certified copies of any public record of the Town is specifically set by a law other than the Act or this Access to Public Records Policy, the Town Clerk shall charge the prescribed fee.
- C. If the Town Clerk cannot copy a public record within the Town offices, the Town Clerk shall make arrangements for the prompt reproduction of the record at public or private facilities outside the Town offices. The Town Clerk shall:
  - (1) Collect from the applicant a fee to cover the actual cost of reproduction; or
  - (2) Direct the applicant to pay the cost of reproduction directly to the facility making the copy.
- D. Before copying a public record of the Town, the Town Clerk shall estimate the cost of reproduction and, at the discretion of the Town Clerk, either obtain the agreement of the applicant to pay the cost, or demand prepayment of the estimated cost before reproducing the record. Prepayment is required if the estimated cost exceeds \$5.00.
- E. Except as provided in §XVIII G below, the Town Clerk may charge a reasonable fee for time that an employee of the Town spends:
  - (1) To search for requested public records; or
  - (2) To prepare public records for inspection and copying.
- F. The fee described in §XVIII E above shall be based on the hourly pay rate of the Town employee who perform the search, preparation and/or reproduction of the records, plus a 30% administrative charge for employer-paid taxes and benefits.
- G. The Town Clerk may not charge a search or preparation fee for the first two hours that an employee of the Town spends to respond to a request for public records.
- H. The applicant shall pay all fees, including the search and preparation fee, if applicable, to the Town at or prior to the time the applicant inspects the public record. No records shall be released to the applicant until all required fees are paid.
- I. If the applicant requests that copies of a public record be mailed or delivered to the applicant or to a third party, the Town Clerk shall charge the applicant for the cost of postage or delivery and shall collect the cost of postage or delivery prior to releasing the records to the applicant or mailing or delivering the record. No charge will be made if the total postage or delivery cost is \$1.00 or less.

- J. Waiver or Reduction of Fee. The Custodian may waive or reduce any fee charged pursuant to this regulation if:
- (1) The applicant requests a waiver; and
  - (2) After consideration of the ability of the applicant to pay the fee and other relevant factors, the Custodian determines that the waiver or reduction is in the public interest.

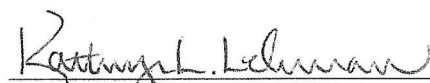
XIX. Time and Place of Inspection.

- A. An applicant may inspect any public record of the Town that the applicant is entitled to inspect during the normal working hours of the Town government, Monday through Friday, except holidays.
- B. The inspection shall occur at the Town Office, unless the Custodian, after taking into account the applicant's expressed wish, determines that another place is more suitable and convenient.

THIS POLICY WAS ADOPTED BY ACTION OF THE TOWN COUNCIL OF THE TOWN OF WASHINGTON GROVE, MARYLAND ON March 10, 2008.

 4-14-2008  
Mayor

ATTEST:

  
Town Clerk