

CLARK COUNTY STAFF REPORT

DEPARTMENT: County Council

DATE: June 5, 2018

REQUESTED ACTION: Approve adoption of an ordinance amending 2.70 of the Clark County Code

Consent Hearing County Manager

BACKGROUND

Clark County Code 2.70 addresses disclosure of public records. It was last amended in 2007, prior to our current form of Charter governance. Recently the State legislature adopted new law that changed the handling of fees in relation to public record disclosures. The proposed ordinance brings the County Code in line with the new form of Charter governance and the new statutory fees.

COUNCIL POLICY IMPLICATIONS

This action does not propose a change in policy. This action does require a change to county code.

ADMINISTRATIVE POLICY IMPLICATIONS

This action proposes a change in administrative policies only to the extent that fees charged for public record responses will change and be consistent across the County.

COMMUNITY OUTREACH

There has been no community outreach for these proposed changes to the County Code.

BUDGET IMPLICATIONS

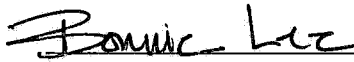
YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.


BUDGET DETAILS

Local Fund Dollar Amount	N/A
Grant Fund Dollar Amount	N/A
Account	N/A
Company Name	N/A

DISTRIBUTION:

Council staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>


Bonnie Lee
Public Disclosure and
Claims Coordinator



Mark Wilsdon
Risk Manager

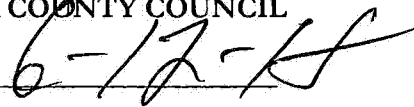

Robert Stevens
Director, General Services

Primary Staff Contact: Bonnie Lee
Ext.: 4928

Attachments:

- 1) Budget Impact
- 2) Resolution
- 3) Code Reviser Back up


APPROVED:
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: 
SR# _____



APPROVED: _____
Jim Rumpeltes, Interim County Manager

DATE: _____

BUDGET IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – We do not yet know what revenue may be generated from the new fee structure. Regardless it will be posted to the General Fund.

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Unknown but GF will be the recipient.						
Total						

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up-NA

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
NA							
Total							

III. B – Expenditure by object category-NA

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total						

ORDINANCE NO. 2018-06-04

An Ordinance amending portions of the Clark County Code relating to disclosure of public records.

WHEREAS, the Washington state legislature amended chapter 42.56 of the Revised Code of Washington, known as the Public Records Act, through ESHB 1594 and EHB 1595, which became effective July 23, 2017; and

WHEREAS, Clark County's Code should conform to the provisions of ESHB 1594 and EHB 1595; and

WHEREAS, the County Council is considering the matter at a duly-advertised public hearing and concludes that adoption will further the public health, safety and welfare; now, therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE CLARK COUNTY COUNCIL, STATE OF WASHINGTON, AS FOLLOWS:

Section 1. Amendatory. Section 3 of Ord. 2007-07-09 and codified as Clark County Code (CCC) 2.70.030 is amended to read:

2.70.030 Definitions.

"County agency" includes every elective office, department, division, bureau, board, commission, council or other local public entity within Clark County's governmental structure, including advisory groups comprised of volunteers appointed to make recommendations to elected officials and excluding the county law library.

"Public record" includes any writing containing information relating to the conduct of government or the performance of any county function prepared, owned, used, or retained by any county agency regardless of physical form or characteristics. For purposes of this chapter, "public record" does not include ~~court case files~~;

- (1) Court case files; or
- (2) Records that are not otherwise required to be retained by the agency and are held by volunteers who:
 - (a) Do not serve in an administrative capacity;

- (b) Have not been appointed by the agency to an agency board, commission, or internship; and
- (c) Do not have a supervisory role or delegated agency authority.

“Writing” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

Section 2. Amendatory. Section 5 of Ord. 2007-07-09 and codified as CCC 2.70.050 is amended to read:

2.70.050 Exemption from requirement to maintain a current records index.

- (1) The ~~((board of county commissioners))~~ County Council finds that Clark County government is comprised of many branches, boards, departments, divisions, subdivisions, agencies, offices, commissions, councils and many other county entities that maintain separate and distinct recordkeeping systems. The records are voluminous, diverse, complex, and are stored in incompatible databases. Indexing of these records would be overwhelmingly costly to the Clark County taxpayers, while substantially interfering with effective and timely county office operations. As a result, it would be unduly burdensome, if not physically impossible, to develop an index of those records identified in RCW 42.56.070(3) or as the statute may be amended in the future.
- (2) No Clark County agency, as defined in Section 2.70.030, is required to maintain an index of public records conforming to the requirements of RCW 42.56.070(3) or as the statute may be amended in the future.
- (3) Any index maintained by an individual county agency shall be made available for public inspection and copying unless exempt from disclosure or made confidential by law.

Section 3. Amendatory. Section 6 of Ord. 2007-07-09 and codified as CCC 2.70.060 is amended to read:

2.70.060 Public records officer—Policies, training and education.

- (1) Public Records Officer. The ~~((county administrator))~~ County Manager shall serve as Clark County’s public records officer, who shall serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the county’s compliance with the public records disclosure requirements of this chapter.

- (2) Public Records Procedures. The ~~((county administrator))~~ County Manager, as public records officer, is authorized to promulgate public records procedures in cooperation with elected county offic~~((ers))~~ials and agencies. Such procedures shall ensure, to the extent practicable, compliance with this chapter, the Washington Public Records Act and related law. Such procedures shall be disseminated in a way reasonably calculated to provide notice to the public, including being available at the administrative offices of each county agency, posting on the county's Internet site, and, at the discretion of the ~~((county administrator))~~ County Manager, in selected county publications.
- (3) Notice to the Public. The name and contact information of the public records officer, to whom members of the public may direct requests for disclosure of public records and who will oversee the county's compliance within the public records disclosure requirements of this chapter, shall be made in a way reasonably calculated to provide notice to the public, including posting at the administrative offices of each county agency, posting on the county's Internet site, and, at the discretion of the ~~((county administrator))~~ County Manager, in selected county publications.

Section 4. Amendatory. Section 7 of Ord. 2007-07-09 and codified as CCC 2.70.070 is amended to read:

2.70.070 Public records coordinators.

~~(((1)))~~ Public Records Coordinators. At the request of the ~~((county administrator))~~ County Manager, county agencies, as defined in Section 2.70.030, shall appoint public records coordinators, whose duties shall include prompt, efficient response to public records requests in compliance with this chapter.

~~(((2)))~~ Notice to the Public. The name and contact information of the appointed public records coordinators, to whom members of the public may direct requests for disclosure of public records and who will oversee their agency's compliance within the public records disclosure requirements of this chapter, shall be made in a way reasonably calculated to provide notice to the public, including posting at the administrative offices of each agency, posting on the county's Internet site, and, at the discretion of the county administrator, in selected county publications.))

Section 5. Amendatory. Section 8 of Ord. 2007-07-09 and codified as CCC 2.70.080 is amended to read:

2.70.080 Requests for public records.

- (1) In accordance with requirements of the Washington Public Records Act that agencies prevent unreasonable invasions of privacy, protect public records from damage or

disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

- (a) **Written Requests.** A request shall be made in writing through use of the online public records request portal (or by mail, fax or electronic mail if desired) upon a form prescribed by the county agency which shall be available at the offices where records are maintained. A request that is made other than upon the form prescribed by the office is permissible, but must provide the information listed in subsections (1)(a)(i) through (v) of this section. The request form shall be presented to the public records officer or public records coordinator, or to a member of the staff designated by him or her, if the public records officer or coordinator is not available, at the office during the office hours specified in this chapter. The request shall include the following information:
 - (i) ~~((The name of the person requesting the record, together with a))~~Appropriate contact information for the person requesting the record, together with preferred method to receive records;
 - (ii) The time of day and calendar date on which the request was made;
 - (iii) ~~((The nature of the request))~~Description of the records being sought;
 - (iv) If the request is for a list of individuals, the requester shall certify that the request is not for commercial purposes, except as provided by state law;
 - (v) The requester, at his or her option, may provide additional information necessary to determine the application of a statute or other law authorizing disclosure or exemption from disclosure of the record(s) requested.
 - (b) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, public records coordinator, or designated staff member to whom the request is made, to assist the member of the public in appropriately identifying and locating the public record requested.
- (2) ~~((Informal Requests. Certain departments and offices of elected officials, which have records in certain forms which have customarily been open to public inspection and/or copying, may, at the option of the heads of such departments or elected officials, permit inspection and copying without requiring such requests in writing))~~Identifiable Records. Requests must reasonably identify the public record(s) the requestor is seeking to obtain. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records. A "bot request" which a County employee reasonably believes was automatically generated by a computer program or script shall be denied. Any request which does not reasonably identify the public record(s) being sought shall be denied.

- (3) Lack of Existing Records. County employees are not required to create documents in response to a public records request or to perform research, retrieve data, provide analysis, information or any report relating to the conduct of county business when no document exists that is responsive to the request.
- (4) Multiple Requests from the Same Requestor. At the discretion of the public records coordinator, multiple requests received from the same requestor may be
 - (a) Combined and responded to as one request; or
 - (b) Processed consecutively, responding to one of the requestor's requests at a time. The requestor may designate a priority for one request over another.

Section 6. Amendatory. Section 10 of Ord. 2007-07-09 and codified as CCC 2.70.100 is amended to read:

2.70.100 Response for request for public records.

- (1) Upon receipt of a request for disclosure of public records, the receiving county agency shall respond promptly. Within five (5) business days of receiving a public records request, the receiving agency shall respond by:
 - (a) Providing the record; or
 - (b) Providing a portion or an installment of the record pending completion of action on the request; or
 - (c) Acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or
 - (d) Denying the public record request. Agency responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record or any part thereof.
- (2) Additional time for the office to respond to a request may be based upon the need to:
 - (a) Clarify the intent of the request;
 - (b) Locate and assemble the records requested;
 - (c) Notify third parties or agencies affected by the request; or
 - (d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

- (3) In acknowledging receipt of a public record request that is unclear, the office may ask the requester to clarify ~~((what))~~ the type of information the requester is seeking. In doing so, the office must provide an estimated first response date regarding the portion of the request that is clear. If no portion of the request is clear, the request should be denied as not properly identifying a public record but offer to keep the request open for clarification. If the requester fails to clarify the request within 30 days, the office shall notify the requestor in writing that no response to the request will be forthcoming.

Section 7. Amendatory. Section 11 of Ord. 2007-07-09 and codified as CCC 2.70.110 is amended to read:

2.70.110 Fees—Production in installments.

- (1) Inspection. No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying.
- (2) Fees for Copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of available county equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the county for its actual costs directly incident to such copying.
- (a) ~~((Charges for photocopies shall be imposed in accordance with the actual per-page cost or other costs established and published by county departments, offices, agencies, boards, bureaus, divisions or commissions. Except as expressly authorized by statute, in no event may a county agency charge a per page cost greater than the actual per page cost as established and published by the various county entities.))~~ The County Council finds that Clark County government is comprised of many branches, boards, departments, divisions, subdivisions, agencies, offices, commissions, councils, and many other county entities that maintain separate and distinct recordkeeping systems. The records are voluminous, diverse, complex, and are stored in incompatible databases. Calculating the actual costs for copying these records would be overwhelmingly costly to the Clark County taxpayers, while substantially interfering with effective and timely county office operations. As a result, it would be unduly burdensome to determine the actual costs for copying public records, and as such, Clark County will adopt the fee schedule set forth in RCW 42.56.120(2) & (3).
- (b) For the purpose of emails, the term “electronic file”, as used in RCW 42.56.120(2)(b)(iii), means each discrete email.
- ~~((b))~~(c) Requests of a significant nature and magnitude may be copied by a commercial vendor at the requestor’s cost and will be subject to a deposit, based on the estimated cost, before copying.

~~(((e) To the extent the individual county agency has not established the actual per page cost for photocopies of its public records, it may not charge in excess of fifteen cents (\$0.15) per page, or as otherwise provided by state law.))~~

- (3) The actual cost of postage, delivery charges, containers or envelopes used to mail the records to the requestor may be charged.
- (4) Any county agency may require a deposit in an amount not to exceed ten (10) percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not paid for, claimed or reviewed, the agency is not obligated to fulfill the balance of the request.
- (5) At the discretion of the public records coordinator, fees may be waived.

Section 8. Amendatory. Section 14 of Ord. 2007-07-09 and codified as CCC 2.70.140 is amended to read:

2.70.140 Exemptions.

- (1) Each county agency has the right to determine that a public record requested in accordance with the procedures outlined in this chapter is exempt in whole or in part under the provisions of the Washington Public Records Act or other law.
- ~~(((2) Each county agency reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by the Washington Public Records Act or other law.))~~
- ~~(((3)))~~(2) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific statutory or case law basis authorizing the withholding or redaction of the record and a brief explanation of how the exemption applies to the record withheld.

Section 9. Amendatory. Section 15 of Ord. 2007-07-09 and codified as CCC 2.70.150 is amended to read:

2.70.150 Review of denial or redaction of public records.

- ~~(((1) Each elected county officer, and presiding judges of the superior and district courts, with the advice and consent of the public records officer, may establish or cause to be established mechanisms for the review of decisions denying inspection of public records for their respective departments of county government. Upon approval by the public records officer, each mechanism for review shall be included in the county's public~~

~~records procedures, as described in Section 2.70.060(2). In the absence of such established mechanism, the following procedure shall apply:))~~

~~((a))~~(1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the public records ~~((officer))~~ coordinator. The written request shall specifically refer to the written statement by the public records officer, public records coordinator, or other staff member which constituted or accompanied the denial.

~~((b))~~(2) Within five (5) business days of receipt of the petition, the public records ~~((officer))~~ coordinator shall confer as needed with the deputy prosecutor assigned to public records and shall affirm or reverse such denial.

~~((c))~~(3) Administrative remedies shall not restrict or limit any other remedies available to any requester, agency or interested person.

Section 10. Amendatory. Section 16 of Ord. 2007-07-09 and codified as CCC 2.70.160 is amended to read:

2.70.160 Adoption of form.

- (1) The public records officer is authorized to adopt, and from time to time amend or modify, a Clark County public records request form for general use by all county agencies, except as provided in subsection (2) of this section. The general form shall be designed to attach to or incorporate unique requirements which may apply to the records of specific county agencies.
- (2) Each elected county ~~((officer, and the presiding judges of the superior and district courts,))~~ official may adopt a public records request form for specific use by all persons requesting inspection or copying of the records of the particular county agency ~~((or court))~~. Such agency-specific forms may request or require information from the requestor that is unique to the agency. At the option of the elected ~~((officer or presiding judge))~~ official and, upon approval by the public records officer, each agency-specific form shall be designed for attachment to or incorporation in the general Clark County public records request form described in subsection (1) of this section.

Section 11. Effective Date. This Ordinance shall be effective on the 10th day following adoption.

Section 12. Instructions to the Clerk. The Clerk of the Council shall:

- A. Record a copy of this Ordinance with the Clark County Auditor; and
- B. Transmit a copy to Code Publishing; and

C. Cause notice of adoption of this Ordinance to be published forthwith, pursuant to Clark County Code 1.02.140.

Section 13. Roll Call Vote. The following persons voted in favor of the above Ordinance

amendments: S Jeanne E. Stewart; Julie Olson;
Marc Boldt; John Blom; Eileen Quiring.

The following persons voted in opposition to the above Ordinance amendments:

ADOPTED on this 12th day of June, 2018.

Attest:

CLARK COUNTY COUNCIL
CLARK COUNTY, WASHINGTON

[Signature]
Clerk to the Council

[Signature]
Marc Boldt, Chair

Approved as to Form Only:
ANTHONY GOLIK
Prosecuting Attorney

Jeanne E. Stewart, Councilor

By: [Signature]
William P. Richardson, WSBA #42104
Deputy Prosecuting Attorney

Julie Olson, Councilor

John Blom, Councilor

Eileen Quiring, Councilor

