

ORDINANCE NO. 679

AN ORDINANCE OF THE TOWN OF ODESSA, STATE OF WASHINGTON, REPEALING RESOLUTION NO. 93-5 AND ADOPTING NEW POLICIES AND PROCEDURES PERTAINING TO WASHINGTON STATE PUBLIC RECORDS ACT

WHEREAS, The Town Council of the Town of Odessa desires to repeal Resolution No. 93-5 and adopt and enforce Policies and Procedures consistent with the intent of the Washington State Public Records Act (PRA), referenced in RCW Chapter 42.56 and the Model Rules of WAC 44-14 and to provide access to public records, protect public records from damage and disorganization and to prevent excessive interference with other essential functions of the Town. The Town is also required to protect certain public records from disclosure subject to various legal exceptions.

NOW THEREFORE, Be it ordained by the Council of the Town of Odessa as follows:

SECTION 1: Repealer: The following are hereby repealed:

- A. Resolution No. 93-5, enacted 1993 and codified as Chapter 2.56 of the Odessa Municipal Code.

SECTION 2: Adoption: The Public Records Policy and Procedure, attached hereto and incorporated herein by this reference as Exhibit "A", is hereby adopted by the Town of Odessa.

SECTION 3: Effective Date: This Ordinance shall be effective after the date of publication.

PASSED AND APPROVED BY THE ODESSA TOWN COUNCIL ON THIS 13th DAY OF FEBRUARY 2017.

Lois Hubbard, Mayor

ATTEST:

Gail Kiesz, Clerk-Treasurer

APPROVED:

Mark DeWulf, Attorney

Published: February 16, 2017

Exhibit “A”

**TOWN OF ODESSA
POLICY AND PROCEDURE**

Subject: PUBLIC RECORDS		Index: ADMINISTRATIVE	
		Number: _____	
Effective Date: _____	Approved by: Council	Supersedes: Resolution 93-5 Chapter 2.56 Odessa Municipal Code Inspection of Public Records, dated _____1993	Page 1 of 7

The Town of Odessa is required by [RCW 42.56.100](#) to adopt and enforce reasonable rules and regulations, consistent with the intent of the Washington State Public Records Act (PRA), referenced in [RCW Chapter 42.56](#) and the Model Rules of [WAC 44-14](#), and to provide access to public records, protect public records from damage and disorganization and to prevent excessive interference with other essential functions of the Town. The Town is also required to protect certain public records from disclosure subject to various legal exemptions.

This PRA Disclosure policy establishes the procedures the Town of Odessa will follow to provide for the fullest assistance to requestors including the most timely possible action on requests, while protecting public records from damage and preventing “excessive interference with other essential agency functions.” [RCW 42.56.100](#)

The Town is required to respond to public records requests pursuant to Chapter 42.56 RCW. The Town is not required to respond to questions, do research, or to give information that is not the subject of an identifiable public record.

Except where these guidelines are mandated by statute, the guidelines in this policy are discretionary and advisory only and shall not impose any affirmative duty on the Town. The Town reserves the right to apply and interpret this policy as it sees fit, and to revise or change the policy at any time. Failure to comply with any provision of these rules shall not result in any liability imposed upon the Town other than that required in The Act.

DEFINITIONS

1. “The Town of Odessa” and “The Town” includes any office, department, division, bureau, board, commission, or agency of the Town of Odessa. [RCW 42.56.010\(1\)](#).

2. “Public Record” includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the Town of Odessa regardless of physical form or

characteristics. [RCW 42.56.010\(2\)](#).

3. **“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. [RCW 42.56.010\(3\)](#).

4. **“Identifiable record”** means an identifiable record is one in existence at the time the records request is made and that Town staff can locate after an objectively reasonable search.

5. **“Exempt record”** includes all agency records that are specifically exempted or prohibited from disclosure by state or federal law, either directly in RCW 42.56 or other statutes. For information related to Public Record Exemptions please see Municipal Research Service Center’s (MRSC) publication “Public Records Act for Washington Cities, Counties and Special Purpose Districts” on the Town’s website under Public Records Requests.

RESPONSIBILITY

Public Records Officers:

- A. **General Town Records:** The Town of Odessa’s Public Records Officer for general Town records, is the Town Clerk-Treasurer. Any person requesting access to general public records or seeking assistance in making such a request must contact the Town Clerk-Treasurer. Other Town staff members may also process public records requests, as needs require.
- B. **Town Police Records:** The Town of Odessa’s Public Records Officer for the Town Police records is the Town Marshall (Chief of Police). Any person requesting Police records must contact the Police Department.

Town Attorney: The Town Attorney’s Office shall provide legal advice to the Public Records Officer or designee on those occasions when such advice is sought. Additionally, the Town Attorney’s Office will provide a timely written response to a written request for explanation of a denial of the release of public information as provided in Section 17 of this policy.

Central and Field Offices: The Town of Odessa’s central office for requesting records is Town Hall, 21 E. 1st Ave., Odessa, WA 99159. The Town is governed by the provisions of RCW Chapter 35.27. The Town has field offices located in various locations for Departments such as Police and Fire Department. More information regarding the Town of Odessa’s departments may be obtained through the Town’s website <http://www.odessawa.com/index.html>.

PROCEDURE

1. How to Request Records:

General Records Requests - Any person requesting access to general Town of Odessa public

records or seeking assistance in making such a request must contact the Town Clerk located at:

Town Clerk/Public Records Officer
21 E. 1st Ave.
PO Box 218
Odessa, WA 99159
Phone: (509) 982-2401
Fax: (509) 982-2410

Hours: 8:30 am to 4:30 pm Mon-Friday
Lunch from 12:00 pm to 1:00 pm

Police Records Requests - Any person requesting Town of Odessa Police records must contact the Police Department located at:

Odessa Police Department
105 E. 1st Ave.
PO Box 218
Odessa, WA 99159
Phone: (509) 982-0141
Fax: (509) 982-2659

Email: tclark@odessaoffice.com

Hours: 8:30 am to 4:30 pm Mon-Friday
Lunch from 12:00 pm to 1:00 pm

2. Request Format: While there is no specific required format for a public records request, a requestor must provide the Town with reasonable notice that the request being made is for public records. If a request is contained in a larger document unrelated to a public records request, the requestor should point out the public records request by labeling the front page of the document as containing a public records request or otherwise calling the request to the attention of the Public Records Officer to facilitate timely response to the request.

The Town requires that all requests for public records be made in writing on a Public Records Request Form, which is available at the Town Clerk's Office, on the Town of Odessa's website, <http://www.odessawa.com/index.html> and the Town Police Station. Written requests must be submitted in person, by mail, or fax. Mail and faxes will be considered received on the date the form is stamped "received", not on the date sent. Requests should include the following information:

- A. The requestors name, mailing address, and contact phone number;
- B. The date of the request;
- C. The nature of the request, including a detailed description of the public record(s) adequate for the Town personnel to be able to locate the records;
- D. A statement that the records are not being requested for a commercial purpose *RCW 42.56.070 (9)*;
- E. Whether the requestor desires copies, or to inspect the requested records;
and,

3. Response to Requests: The Town will process requests in the most efficient manner as the Public Records Officer (defined above) deems appropriate. The Public Records Officer may ask a requestor to prioritize the records he or she is requesting so that the most important records may be provided first.

Within five (5) business days of receiving a request, the Town will either:

- A. Make the records available for inspection or copying;
- B. Send copies of the records (assuming payment has been made);
- C. Acknowledge that the request has been received and provide a reasonable time estimate it will need to respond to the request;
- D. Acknowledge that the request has been received but request clarification;

E. Deny the request.

Additional time to respond may be based on the need to clarify the intent of the request, to locate and assemble the records, to redact confidential or exempt information, to prepare a withholding index, to notify third parties or agencies affected by the request and provide such parties/agencies with the opportunity to seek a court order preventing disclosure where appropriate, and/or to consult with the Town Attorney about whether the records are exempt from disclosure. The Public Records Officer should briefly explain the basis for the time estimated to respond. Should an extension of time be necessary to fulfill the request, the Public Records Officer will provide a revised estimate and explain the changed circumstances that make it necessary.

The Town frequently receives requests for public records identified in terms of “any and all documents related to” or similar language. If the requestor is unable or unwilling to help narrow the scope of the documents being sought in order to expedite the Town’s response and/or reduce the volume of potentially responsive documents, the Public Records Officer is allowed to err on the side of producing more rather than fewer documents in response to such a broad, general request. Town staff shall not be obligated to interpret such a broad, general request in order to decipher which specific documents may be of interest to the requestor and the PRA does not allow a requestor to search through the Town’s files for records which cannot be identified or described to the Town.

The Town is not authorized to provide lists of individuals for commercial purposes. The Public Records Officer may also seek sufficient information to determine if another statute or court order may prohibit disclosure. If the requestor fails to clarify an unclear request within 15 working days, the Town will treat the request as having been withdrawn. [RCW 42.56.520](#)

If the public record contains personal information that identifies an individual or organization other than the subject of the requested public record, the Town may notify that individual or organization to allow the party to seek relief pursuant to [RCW 42.56.540](#). Such relief may include a court injunction prohibiting release of the record because such examination would not be in the public interest and would substantially and irreparably damage any person or vital governmental function. The Town may take the above into account when providing an estimate of when the records will be available. Nothing in this policy is intended to, nor does it, create any right to such notice.

When a request uses a phrase such as “all records relating to”, the Public Records Officer may interpret the request to be for records which directly and fairly address the topic. The Town may respond to a request to provide access to a public record by providing the requestor with a link to the Town’s web site containing an electronic copy of that record if it can be determined that the requestor has internet access and the requestor agrees that the request has been satisfied. When the requestor has found the records he or she is seeking, the requestor should advise the Public Records Officer that the requested records have been provided and the remainder of the request may be cancelled.

4. Providing Records in Installments: When the request is for a large number of records, the Town may provide access for inspection and copying in partial installments if reasonably determined that it would be practical to provide the records in that way. If the requestor does not contact the Public Records Officer within thirty (30) working days to arrange for the review of the first installment, the Town may deem the request abandoned and may stop fulfilling the remainder of the request. The Town may prioritize record requests received after commencing to fulfill the large request. [RCW 42.56.120](#)

5. Electronic records: The process for requesting electronic public records is the same as the process for requesting paper public records.

When a requestor requests records in an electronic format, if technically feasible, the Public

Records Officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the Town and is generally commercially available; or will provide the records in a format that is reasonably translatable from the format in which the agency keeps the record.

6. No Duty to Create Records: This policy does not require the Town to answer written questions, summarize data or information, create new public records, or provide information in a format that is different from original public records; however, the Town may in its discretion, create such a new record to fulfill the request where it may be easier for the Town to create a record responsive to the request than to collect and make available voluminous records that contain small pieces of information responsive to the request. [WAC 44-14-04003\(5\)](#)

7. No Duty to Provide Information: This policy does not require the Town to respond to requests for information, research, opinions or advice. Requests for information, research, opinions, advice, or similar requests will not be responded to pursuant to this policy.

8. No Duty to Supplement Responses: The Town is not obligated to hold current records requests open to respond to requests for records that may be created in the future. A new request must be made to obtain later-created public records.

9. Fees: The charge for photocopies is fifteen cents per page or the actual per page cost, whichever is greater. When public records are mailed to a requestor, a charge for postage and the cost of the envelope or container used may be added. No fee is charged for inspection of a public record or for locating a record. Fees may be waived due to the few number of copies made or other circumstances. Payment of fees is required prior to release of records unless other arrangements have been made. [RCW 42.56.120](#)

10. Deposit: The Town may require a deposit of up to ten percent (10%) of the estimated cost of copying records prior to copying any records for a requestor. The Town may also require payment of the remainder of the cost before providing all of the records, or the payment of the costs of copying an installment before providing that installment. [RCW 42.56.120](#)

11. Availability of Public Records: Public records are available for inspection and copying at the Town Clerk's Office during normal business hours: Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding the lunch hour (Noon – 1:00 p.m.) and excluding legal holidays. Town personnel and the requestor may make mutually agreeable arrangements for time(s) of inspection and copying.

To the extent possible given other demands for space and staff time, the Public Records Officer shall promptly provide space to inspect public records at Town Hall. The Town deems it necessary, in order to comply with the PRA's mandate to protect public records, to require that inspections of public records be conducted in the presence of the Public Records Officer or designated staff. The Town will make every effort to provide staff to oversee the expeditious inspection of public records without unduly compromising or unreasonably interfering with the essential functions of the Town. All assistance necessary to help requestors locate and inspect particular responsive records shall be provided by the Public Records Officer, provided that the giving of such assistance does not unreasonably disrupt the daily operations of the Town Clerk or other duties of any assisting employee(s) in other Town departments. In accommodating a request for public records inspection, the Town may consider the size of the request, the ease with which the requested records can be made available for inspection, and special accommodations requested by the requestor necessary in order to inspect the records, the availability (schedule) of the requestor to conduct the inspection, the availability of Town staff to observe the inspection, the time constraints on staff availability imposed by other current Town business, and any other relevant circumstance.

After inspection is complete, the requestor shall indicate which documents he/she wishes to have copied using a non-permanent method of marking the desired records as approved by the Public Records Officer. The Public Records Officer will arrange for copying.

12. Preservation of Public Records: No member of the public may remove a public record from the Town Clerk's Office without the Public Records Officer's permission. No member of the public may remove a public record from a viewing area, disassemble, or alter, fold, mark, deface, tear, damage or destroy any public record. Public records maintained in a file jacket or binders, or in chronological order, may not be dismantled except for the purpose of copying, and then only by Town staff. Copies of public records may be copied only on copying machines of the Town unless other arrangements are made by the Public Records Officer. No food or drink will be permitted during the inspection of public records. Access to file cabinets, shelves, vaults and other Town storage areas is restricted to authorized Town staff.

13. Organization of Public Records: The Town finds that maintaining an index as provided in [RCW 42.56.070\(3\)](#) for use by the public would be unduly burdensome and would interfere with agency operations given the high volume, various locations, and types of public records received, generated and otherwise acquired by the Town. [RCW 42.56.070\(4\)](#) & [Resolution No. 2004-37](#). Notwithstanding the foregoing, the Town will maintain its records in a reasonably organized manner and take reasonable actions to protect records from damage and disorganization.

14. Closing Abandoned or Unpaid Requests: If the requestor withdraws the request, fails to fulfill his or her obligations to inspect the records within thirty (30) days of notice that the records are available for inspection, or fails to pay the deposit, installment payment or final payment for the requested copies, Town personnel will close the request. Town personnel will document closure of the request and the conditions that led to closure. [RCW 42.56.120](#)

15. Records Exempt from Public Disclosure: The Town is not required to permit public inspection and copying of records for which public disclosure of the record is prohibited, restricted or limited by state law or federal statute or regulation. The Town is prohibited by statute from disclosing lists of individuals for commercial purposes. [RCW 42.56.070\(9\)](#)

The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. [RCW 42.56.230](#) through [42.56.480](#) contains a large number of exemptions from public inspection and copying.

Other statutes outside the Public Records Act may prohibit and exempt disclosure of certain documents or information [RCW 42.56.070\(1\)](#).

The Town's failure to list an exemption shall not affect the effectiveness of the exemption.

16. Denial of Request Due to Exemption: All denials of requests for public records will be accompanied by a written statement specifying the reason(s) for the denial, including a statement of the specific exemption authorizing the withholding of the record *and* a brief explanation of how the exemption applies to the record withheld. [RCW 42.56.210\(3\)](#)

17. Mechanism for Review of Denial: Any person who objects to the denial of a public records request may petition in writing to the Town Clerk for a review by the Town Attorney of that decision. The petition shall include a copy of or reasonably identify the written statement by the Town Attorney's office or designee denying the request. The Town Attorney shall perform a review of the denial as promptly as possible. Pursuant to state law, the review shall be deemed concluded at the end of the second business day following the denial to represent final action for the purposes of judicial review. [RCW 42.56.530](#)

18. Retention of Records: The Town is not required to retain all records it creates or uses. However, the Town will follow *RCW Chapter 40.14*, Preservation and Destruction of Public Records, in the retention and destruction of public records. The Secretary of State, State Archives Committee approves a general retention schedule for local agency records (including towns) that is common to most agencies. Individual agencies may seek approval from the Local Records Committee for retention schedules specific to their agency or that, due to their particular business needs, must be kept longer than provided in the general schedule.

The retention schedule for local agencies is available at www.secstate.wa.gov/archives. Retention schedules for documents vary based on the content of the record. *WAC 4414-03005*

19. Loss of Right to Inspect: Inspection shall be denied and the records withdrawn by the Public Records Officer if the requestor, when reviewing the records, acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the Town.

20. Disclaimer of Liability: Neither the Town nor any officer, employee, official or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon a release of Public Records if the person releasing the records acted in good faith in attempting to comply with this policy.

This policy is not intended to expand or restrict the rights of disclosure or privacy as they exist under state and federal law. Despite the use of any mandatory terms such as “shall”, nothing in this policy is intended to impose mandatory duties on the Town beyond those imposed by state and federal law.