

BEFORE THE BOARD OF COUNTY COMMISSIONERS

Klickitat County, Washington

IN THE MATTER OF }
AMENDING KLICKITAT COUNTY CODE BY }
CREATING A NEW TITLE 23 "PUBLIC RECORDS" }
AND ADDING CHAPTER 23.01 TO BE TITLED }
"PUBLIC RECORDS DISCLOSURE POLICY"; AND }
REPEAL OF CHAPTER 1.36 TITLED "PRODUCTION }
OF PUBLIC RECORDS" }

ORDINANCE # 070516-2

WHEREAS, the Board of County Commissioners, meeting in regular session, and having before it the need to amend the Klickitat County Code by creating a new Title 23 "Public Records" and adding Chapter 23.01 to be titled "Public Records Disclosure Policy"; and

WHEREAS, legal notification was published in *The Goldendale Sentinel* and *The Enterprise* the weeks of June 1 and June 8, 2016 and posted on the Klickitat County website under Public Information - Public Notices; and

WHEREAS, a Public Hearing was held at 1:30 PM and continued to 6:30 PM on the 14th day of June, 2016 at which time all persons present were given an opportunity to speak for or against the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED that a new Title 23 "Public Records" and Chapter 23.01 "Public Records Disclosure Policy" be added to the Klickitat County Code to be worded as follows:

Title 23
PUBLIC RECORDS

Chapter 23.01
PUBLIC RECORD DISCLOSURE POLICY

Sections

- 23.01.10 Purpose of chapter.
- 23.01.20 Interpretation and construction of provisions.
- 23.01.30 Public Records - Court Records - Not Applicable.
- 23.01.40 Definitions.
- 23.01.50 Public records available.
- 23.01.60 Public Records officer - Appointment and duties.
- 23.01.70 Requests - Form - Information required.
- 23.01.80 Inspection of public records--Where and when.
- 23.01.90 Response to public records requests.
- 23.01.100 Exempt records.
- 23.01.110 No Duty to Create Records.
- 23.01.120 Requestor's Obligations.
- 23.01.130 Copying and delivery fees.

- 23.01.140 Review of denied request.
- 23.01.150 Electronic Information.
- 23.01.160 Exemption from requirement to maintain a current records index.
- 23.01.170 Retention and Destruction of Public Records.
- 23.01.180 Adoption of Form - Request for Public Records.
- 23.01.190 Severability.
- 23.01.200 Disclaimer of Liability.

23.01.10 Purpose of chapter. The purpose of this chapter is to ensure compliance with the provisions of chapter 42.56 RCW and other applicable law relating to disclosure of public records.

23.01.20 Interpretation and construction of provisions. The provisions of this policy shall be construed to promote full access to the County's public records in order to assure continuing public confidence in government; provided, that when making public records available the County shall prevent invasions of privacy, shall protect public records from damage or disorganization, and shall prevent excessive interference with essential government functions

23.01.30 Public Records - Court Records - Not Applicable. This chapter is not intended to provide rules for access to court documents; Chapter 42.56 RCW does not apply to court documents. Access to court administrative records are governed by GR 31.1. This chapter is not intended to provide rules regarding access to public records of the State of Washington or the federal government, such as the Judicial Information System (JIS) and the National Crime Information Center (NCIC), even though those documents may be available at computer stations located in Klickitat County.

23.01.40 Definitions. The definitions set forth in RCW 42.56.010 as hereafter amended shall apply to this chapter.

23.01.50 Public records available. Public records are available for public inspection and copying pursuant to this policy except as otherwise provided by law.

23.01.60 Public Records officer - Appointment and duties. A public records officer shall serve as the point of contact for members of the public who request disclosure of public records. Each public records officer shall be responsible for implementation of and compliance with this chapter and the Public Records Act.

- (a) The clerk of the board of county commissioners is the public records officer for the board of county commissioners.
- (b) Unless otherwise designated by the board of county commissioners, the public records officer for all departments, boards, commissions and committees appointed by and reporting to the board of county commissioners is the department head, or board or commission chairperson.
- (c) Unless otherwise designated by an elected official, each elected official is the public records officer for the offices and departments administered by the elected official.
- (d) The public records officer for the superior court judges shall be the superior court administrator.
- (e) The public records officer for the district court judges shall be the district court administrator.
- (f) An alternate public records officer shall be designated by each appointing authority to act when the designated public records officer is absent or otherwise unavailable to act.

23.01.70 Requests - Form - Information required.

(a) Public records may be inspected and/or copies may be obtained under the following procedures:

- (1) A request for public records shall be directed to the public records officer for the office or department having custody or control of the requested records. If the location of records is unknown, then the request may be made to the public records officer for the board of county commissioners.
- (2) A request for public records shall be made in writing and include the following information:
 - (i) The requester's name and contact information including, but not limited to, mailing address, telephone number and email address;
 - (ii) The date of the request;
 - (iii) A clear indication that the document is a "Public Records Request";
 - (iv) Whether the request is to inspect the public records or for copies of public records, or both;
 - (v) A clear description of the public records requested for inspection and/or copying and the office or department having custody of the public records;
 - (vi) If the request is for a list of individuals, a statement, under penalty of perjury, of the purpose of the list and that the list will not be used for any commercial purposes or that the requester is authorized or directed by law to obtain the list of individuals for commercial purposes, with a specific reference to such law; and
 - (vii) Whether the request is for printed or digital copies of the public record.

(b) Requests for inspection or copying of public records maintained by an agency of the state of Washington or another government agency not prepared, owned, used or retained by Klickitat County must be made to such agency and will be subject to that agency's rules and regulations, including required forms and fees.

23.01.80 Inspection of public records—Where and when. Public records shall be inspected at the offices of the elected official or department having custody or control of the records. Public records shall be available for inspection from nine a.m. to twelve noon and from one p.m. to four p.m., Monday through Friday, excluding legal holidays; provided, that there is no obligation to allow inspection immediately upon a demand. A public records officer may request that the person seeking to inspect public records schedule an appointment for inspection.

23.01.90 Response to public records requests.

- (a) The public records officer shall, to the extent practicable, assist requesters in identifying the public records sought.
- (b) There is no obligation to allow inspection or provide a copy of a public record on demand.
- (c) Within five business days after receiving a public record request, the public records officer shall respond to the request in writing. The public officer shall make one or more of the following responses:
 - (1) Make the records available for inspection or copying; or
 - (2) Identify an internet location where the record can be accessed. Requesters who cannot

- access the internet may be provided hard copies or access to a County terminal to access the record; or
- (3) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requester; or
 - (4) Provide a reasonable estimate of when records will be available; or
 - (5) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requester. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
 - (6) Deny the request, in whole or in part, whether by withholding a requested record or redacting a requested record, stating the specific exemption(s) prohibiting disclosure and providing a brief explanation of how the exemption applies to each withheld and redacted record.
- (d) Additional time to respond to a request may be based upon the county's need to:
- (1) Clarify the intent of the request;
 - (2) Identify, locate, assemble and/or make the records ready for inspection or disclosure;
 - (3) Notify third persons or agencies affected by the request; or
 - (4) Determine whether any of the records or information requested is exempt from disclosure and whether a denial should be made as to all or part of the request.
- (e) If the public records officer does not respond in writing within five working days after receipt of a request for public records, the requester shall be entitled to request review by the Prosecuting Attorney's Office.
- (f) If the public records officer provides an estimate of the time required to respond to the request and the requester believes the amount of time stated is not reasonable, then the requester may request that the Prosecuting Attorney's Office review the estimate of time.
- (g) When a request for public records is received that concerns a subject known to involve litigation that is pending, threatened or anticipated, the public records officer shall promptly notify the Prosecuting Attorney's Office of the request. Copies of the request, all correspondence between the public records officer and the requester, and copies of the public records provided to the requester shall be delivered to the Prosecuting Attorney's Office. The requester shall not be charged for copies delivered to the Prosecuting Attorney's Office.
- (h) No Duty to Supplement Responses: The County 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.
- (i) Providing Records in Installments: When the request is for a large number of records, the County 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 County may deem the request abandoned and may stop fulfilling the remainder of the request. The County may prioritize record requests received after

commencing to fulfill the large request.

- (j) Closing Abandoned or Unpaid Requests: If the requestor withdraws the request, fails to timely clarify a 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, the public records officer handling the request will close the request. The Public Records Officer handling the request will document closure of the request and the conditions that led to closure.

23.01.100 Exempt records.

- (a) The County hereby adopts the list of laws maintained by the Municipal Research Services Center (MRSC) as the list containing every law, other than those listed in Chapter 42.56 RCW, which the County believes exempts or prohibits disclosure of certain types of public records held by the County. Any elected official or department head may establish their own list if they so choose.
- (b) If a public records officer determines that all or part of any records should not be disclosed pursuant to Chapter 42.56 RCW or other law, the Public Records Officer shall consult with the Prosecuting Attorney's Office prior to denying the request or redacting information from a public record.
- (c) Listed below are the subjects of some frequently applicable exemptions which may present concerns regarding disclosure. Any denial of a request for public records must state the state statute, federal statute, or common law basis for such denial.
- (d) If a request concerns any of the following topics, the public records officer should consult with the Prosecuting Attorney's Office prior to responding to a public records request:
- Job application materials;
 - Residential addresses and personal phone numbers of employees and volunteers;
 - Certain information in personnel files of current and retired employees and volunteers;
 - Private communications of current and former employees;
 - Taxpayer information that is private;
 - Records compiled by law enforcement, probation officers and code enforcement officers for ongoing investigations;
 - Identity of witness to a crime or persons who file complaints with investigation and law enforcement agencies including the sheriff, prosecuting attorney and code enforcement officers, where the witness has requested anonymity;
 - Test questions scoring keys or information for employment examinations;
 - Real estate appraisals made for an agency relative to the acquisition or sale of property;
 - Valuable designs, formulae, drawings and research data;
 - Preliminary drafts, notes, recommendations in which opinions are expressed as part of the deliberative process;
 - Attorney work product pertaining to pending, threatened or completed litigation;
 - Records, maps or other information identifying the location of archeological sites;
 - Complaints and investigative records compiled in connection with claims of discrimination in employment;

- Credit card numbers;
- Records prepared to prevent, mitigate or respond to criminal terrorist acts;
- Information regarding the infrastructure and security of telecommunication networks;
- Medical records and information;
- Information pertaining to victims of crime;
- Information regarding organized crime;
- Traffic accident reports prepared by citizens;
- Industrial insurance claim files and records;
- Identity of child victims of sexual assault;
- Jail Records;
- Criminal history report;
- Juvenile records.

23.01.110 No Duty to Create Records. This policy does not require the County 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 County may in its discretion, create such a new record to fulfill the request where it may be easier for the County 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.

23.01.120 Requestor's Obligations.

- (a) Reasonable notice that request is for public records. A requestor must give the County reasonable notice that the request is being made pursuant to the act. Requestors are encouraged to cite or name the act but are not required to do so. A request using the terms "public records," "public disclosure," "FOIA," or "Freedom of information Act" (the terms commonly used for federal records requests) should provide the County with reasonable notice in most cases. A requestor should not submit a "stealth" request, which is buried in another document in an attempt to trick the agency into not responding.
- (b) Identifiable record. A requestor must request an "identifiable record" or "class of records" before an agency must respond to it. RCW 42.56.080 and 42.56.550(1). An "identifiable record" is one that County staff can reasonably locate. The act does not allow a requestor to search through County files for records which cannot be reasonably identified or described to the County. An "identifiable record" is not a request for "information" in general. Public records requests are not interrogatories. The County is not required to conduct legal research for a requestor. When a request uses an inexact phrase such as all records "relating to" a topic (such as "all records relating to the property tax increase"), the County may interpret the request to be for records which directly and fairly address the topic. If the County receives a "relating to" or similar request, it should seek clarification of the request from the requestor. This policy does not require the County 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.
- (c) "Overbroad" requests. The County cannot "deny a request for identifiable public records based solely on the basis that the request is overbroad." RCW 42.56.080. However, if such a request is not for identifiable records or otherwise is not proper, the request can still be denied. When

confronted with a request that is unclear, the County should seek clarification.

23.01.130 Copying and delivery fees.

(a) Disallowed Charges.

- (1) No fee will be charged for the inspection of a public record.
- (2) No fee will be charged for locating public records in response to a request and making the records available for inspection or copying.
- (3) No fee will be charged for searching for public records, redacting portions of a record which are exempt from disclosure, or preparing an index of exempt documents.

(b) Allowed Charges—Generally.

- (1) A reasonable fee will be charged to reimburse the county for the costs of providing copies. The public records officer may waive the fee for fewer than one hundred pages on the basis that the expense of processing the payment exceeds the costs of providing the copies.
- (2) A reasonable fee shall be charged to reimburse the county for the cost of delivering copies of public records to a requester, including the cost of packaging the copies for delivery and the cost of postage or delivery service.
- (3) Any request for which the response will be more than one hundred pages of documents, oversized documents, color photographs or reproductions, tape recordings and computer disks may be sent to a private copying service for copying, in which case the copying fee shall be the actual charge imposed for copying, plus applicable taxes and shipping costs.
- (4) The public records officer may require that all copying and delivery fees be paid in advance of the release of the copies.

(c) Statutory Charges. The fee for searching records, research, and/or providing a copy of a public record may be set by statute. Where the state or federal law sets a fee, that fee will be charged. Court papers (RCW 3.62.060); duplication of electronic tapes of a court proceeding (RCW 3.62.060); traffic accident reports (RCW 46.52.085); and Auditor's fees (RCW 36.18.010) are examples.

(d) Each elected official, department head, board or commission may establish a fee schedule for public records requests made upon them, based on actual expenses, effective upon adoption by legislative authority. Unless a fee is fixed by another federal, state or county ordinance, the following fee schedule is applicable:

8.5" by 14" page, or less	\$0.15 per page
Greater than 8.5" by 14" page	\$1.00 per page
Greenbar computer printouts	\$1.00 per page
Color maps	\$5.00 per square foot
Audio in any medium	\$20.00 per item
Fax (8.5" by 11" only)	\$1.00 per page

Postage	Actual expense
Boxes	Actual expense
Envelopes	\$0.50 each
Copying service	Actual Expense
Electronic records	See Section 23.150

- (e) The public records officer may require a deposit in an amount not to exceed ten percent of the estimated cost of providing requested public records. If the public records officer responds to a request on a partial or installment basis, the requester shall be charged for each part or installment responding to the request. If a partial or installment response is not claimed or reviewed by the requester, the public records officer is not obligated to fulfill the balance of the request.

23.01.140 Review of denied request.

- (a) 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 Prosecuting Attorney for the County. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.
- (b) Upon receiving a written request for review of a decision denying a public record, the Prosecuting Attorney for the County shall request a response from the public records officer or other staff member denying the request. The Prosecuting Attorney, or his or her designee, shall consider the matter and either affirm or reverse such denial within two (2) business days following the receipt of the written request for review of the denial of the public record.
- (c) Administrative remedies shall not be considered exhausted until the Prosecuting Attorney or his or her designee has made a written decision, or until the close of the second (2nd) business day following receipt of the written request for review of the denial of the public record, whichever occurs first.

23.01.150 Electronic Information.

- (a) The County produces and maintains data in electronic records to maximize efficiency in fulfilling its basic public service functions. These electronic records relate to the operation and conduct of County government.
- (b) Electronic records are public records subject to disclosure under the Public Records Act and this policy, unless exempt from disclosure under state or federal law.
- (c) If the electronic record is large and/or not capable of being printed in an understandable format, then the electronic record may be provided in the digital format in which the record is maintained by the County. The County is not obligated to convert an electronic record to a digital format that is different than the format maintained by the County.

- (d) Fees for providing electronic records in electronic form shall be based on the actual cost of the media used to provide the records and staff time (plus benefits) to prepare the information onto the media.
- (e) The County has no obligation to create custom electronic products by acquiring data, running custom queries, programming software, testing models, reformatting data, or configuring a product in order to respond to a specific request.

23.01.160 Exemption from requirement to maintain a current records index.

- (a) The Klickitat County Board of Commissioners finds that Klickitat County government is comprised of many branches, boards, departments, divisions, agencies, offices, and commissions, which maintain separate records and incompatible record-keeping systems. The county's records are voluminous, diverse, complex and stored in multiple locations and in multiple incompatible data bases. As a result, it would be unduly burdensome and costly to the Klickitat County taxpayers, and would substantially interfere with effective and timely county office operations to develop an index of those records identified in RCW 42.56.070(3).
- (b) No Klickitat County official, branch, agency, board, department, division, office, commission or other Klickitat County entity is required to maintain an index of public records conforming to the requirements of RCW 42.56.070(3).
- (c) Any index maintained by an individual branch, agency, board, department, division, office or commission shall be made available for public inspection and copying unless exempt from disclosure or made confidential by law.

23.01.170 Retention and Destruction of Public Records. The Washington State Archivist has developed retention schedules for many categories of local government records including e-mail and electronic records. Records of the County should be retained and destroyed consistent with the retention schedules. Copies of the retention schedules are available from Archives and Records Management of the Office of the Secretary of State and online at the state website. If a public record request is made at a time when a record exists, but is scheduled for destruction in the near future, the Public Records Officer shall direct that the record be retained until the request is resolved.

23.01.180 Adoption of Form - Request for Public Records. The County hereby adopts for use by all persons requesting inspection and/or copies of records of any official or department of the County the form entitled "Request for Public Records." See attached Exhibit A. The form will be maintained by the Klickitat County Prosecuting Attorney.

23.01.190 Severability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

23.01.200 Disclaimer of Liability. Neither the County 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 acted in good faith in attempting to comply with this policy. (RCW 42.56.060)

This policy is not intended to expand or restrict the rights of disclosure or privacy as they exist under

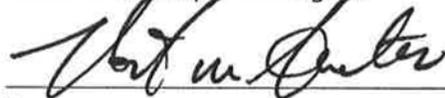
state and federal law. Nothing in this policy is intended to impose mandatory duties on the County beyond those imposed by state and federal law.

BE IT FURTHER ORDAINED that Klickitat County Code Chapter 1.36 titled "Production of Public Records" is hereby repealed in its entirety.

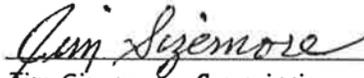
BE IT FINALLY ORDAINED that this ordinance shall be in full force and effect the day following adoption.

ADOPTED this 5th day of ~~June~~ ^{July}, 2016.

BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington



David M. Sauter, Chairman



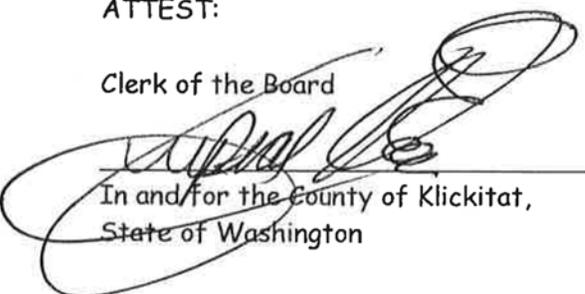
Jim Sizemore, Commissioner

Absent

Rex F. Johnston, Commissioner

ATTEST:

Clerk of the Board


In and for the County of Klickitat,
State of Washington

AYE 2
NAY _____
ABSTAIN _____
ABSENT 1

APPROVED AS TO FORM:


David R. Quesnel, Prosecuting Attorney

EXHIBIT "A"

Klickitat County Request for Public Records

Klickitat County Ordinance No. XXX | Chapter 23 KCC (Klickitat County Code)

TO BE COMPLETED BY REQUESTOR:

DATE OF REQUEST: _____ TIME: _____

NAME: _____ PHONE NUMBER: _____

ADDRESS: _____
STREET CITY STATE ZIP

EMAIL/OTHER CONTACT INFORMATION: _____

- I WOULD LIKE TO (mark all that apply):
[] Inspect the public records
[] Obtain copies of the public records

DESCRIBE THE RECORDS YOU ARE REQUESTING:

NOTE: If the request is for a list of names and/or addresses, please attach a signed statement, under the penalty of perjury, the purpose of the request and that the list will not be used for any commercial purposes.

TO BE COMPLETED BY RECORDS OFFICER:

DATE RECEIVED: _____ TIME: _____

OFFICE/DEPARTMENT/COMMISSION/BOARD: _____

RECORDS OFFICER: _____

- Request: [] was forwarded to Prosecuting Attorney's Office for advice; [] was not forwarded to Prosecuting Attorney's Office for advice.
Records: [] are available for inspection or copying (attach copy of letter to requestor required by KCC 23.090(c)(1)); [] are not identifiable and a request for clarification was made on this date _____ by email or letter (attach copy of email or letter to requestor as required by KCC 23.090(c)(5)); [] may be available, but more time is needed to respond (attach copy of letter to requestor required by KCC 23.090(c)(4)); [] are not available because they are exempt (attach copy of letter to requestor required by KCC 23.090(c)(6)); [] partially available for inspection or copying as some portion of the records are exempt and have been withheld and/or redacted (attach copy of letter to requestor required by KCC 23.090(c)(6)); [] are not available because no responsive records exist.

Signature of Records Officer _____ Date _____

- Request closed because: [] copies were inspected or provided to requestor; [] no response was received to request for clarification and requestor was notified request has been closed (attach copy of closure letter to requestor required by KCC 23.090(j)); [] records were exempt in their entirety and requestor was notified of exemptions [] no payment was received from requestor and requestor was notified that the request has been closed (attach copy of closure letter to requestor KCC 23.090(j)).

Signature of Records Officer (or Prosecuting Attorney if request handled by PA's office) _____ Date _____