

ADMINISTRATIVE ORDER NO. 51

TO: All Departments
RE: Public Records Requests

INTRODUCTION:

One of the foundations of our system of democratic government is the people's right to know what their government is doing. Public records not only support the immediate needs of the government and insure its continuity; they protect the rights and interests of the people. Maintained over time, these records preserve the history of a community. Access to public records includes the right to review or inspect public records and obtain copies of public records.

The purpose of implementing a "public records request" policy is to: facilitate public access, protect individual privacy, protect public records from damage or disorganization, prevent excessive interference with other essential functions of the City and to develop a consistent & fair method of responding to requests for public records.

The following guidelines shall constitute the policy for the City of Billings, to be followed in responding to requests for public records:

1. All requests for public records shall be subject to this policy.
2. Request forms are to be completed for any Non-Routine public information records that are pulled for review or copying.
3. All request forms must be signed by the Department Head (or his designee) for the respective department. This shall constitute authorization for departmental staff to fill the request.
4. The City Clerk's office shall be the Office of Record for completed Records Request Forms. All request forms should be forwarded to the City Clerk upon completion and response to the request.
5. It should be noted on the form, what documents/files were reviewed or copied and the charges, if any that were charged.
6. If a significant amount of copies are made for the requester, the requester must sign an acknowledgment form, confirming receipt of the copies. This form is to be stapled to the request form. Or the recipient may also indicate receipt on the request form by signing: "received by (person's signature) and the date received."
7. Once a request for records has been received, the City has up to ten (10) business days to respond.

8. Blank request forms should be available in all offices, to avoid sending citizens between offices and facilities.
9. NO NEW DOCUMENT OR RECORD will be created to respond to a records request. Applicable records may be made available for requester to compile his/her own data.
10. Any request, which does not refer to an “identifiable”, public record, shall not be processed until the requester provides further information. It shall be the responsibility of the department receiving the request to notify requester that further information is required before the request can be processed and to attempt to get that information, so the request can be processed in a timely manner.
11. STAFF shall make copies of City records during normal office hours. For security reasons and to avoid unreasonable disruption of operations, copying facilities will not be available for use by the public.
12. Computer or Electronic Records will be made available pursuant to M.C.A. 2-6-110. (See details under Fees/Charges). Staff shall notify requester of the hourly rate that will be charged under this section, BEFORE proceeding with processing the request, thereby allowing requester the right to cancel request.
13. This administrative order does not supersede any rules of evidence or rules governing the production of information or documentation in the course of litigation.

DEFINITIONS:

- Public Records: (M.C.A. 7-1-4144).
 - (1) “Except as provided in subsection (2), all records and other written materials in the possession of a municipality shall be available for inspection and reproduction by any person during normal office hours. The governing body may impose reasonable fees for providing copies of public records.
 - (2) Personal records, medical records, and other records, which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.
 - (3) Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public.”

Per M.C.A. 2-6-202: Definitions: (1) “Public records” includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that

has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana. (This applies to the City as a political subdivision of the State of Montana.)

- Prohibition on distribution or sale of mailing lists: (M.C.A. 2-6-109)
 - (1) "Except as provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government: (a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and (b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.
 - (2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.
 - (3) Except as provided in M.C.A. 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection." (NOTE: Sections (4) through (8) apply to records not created by the City.)
- Routine Public Information: Material that is prepared for the public and is made available to them on a regular basis. This is often prepared for promotional or advisory reasons and prepared in mass quantities for general distribution **with the intent of mass distribution**. NO REQUEST FORM IS REQUIRED for these materials. Examples: City Charter, Brochures, Pamphlets, Applications, Blank Bid packets, etc.
- Non-Routine Public Information: Material prepared in the regular course of City business (i.e. regular departmental business records) that the public requests to view or have copied. These records **document regular business transactions by each department and are not prepared for mass distribution**. However, they are available to the public. THE REQUEST FORM MUST BE COMPLETED and signed by the department head or his designee before responding to the request.

NOTE: If a particular item of information is not contained in the departmental list(s) or if the department is unsure as to whether such information is required to have a request form completed, contact the City Clerk's Office OR have a request form completed.

If a department is unsure as to whether the information can be released to the public because of potential privacy concerns, contact the City Attorney's Office.

If your department has received a ruling from the City Attorney's Office regarding a certain type of record created and maintained by your office, continue to use that directive for that record until notified otherwise.

Due to the nature of change in municipal government, "drafts" often represent work in various stages of completion. Drafts should be stamped "DRAFT" and if copies are provided to the requester, the requester should be advised that the document is NOT final and subject to changes.

FEES/CHARGES:

- (1) No fee will be charged for requests of those materials deemed to be Routine Public Information. (See *Definition on Page 3*).
- (2) Copy charges will be set at \$0.25/page for copies of any material deemed to be Non-Routine Public Information. (See *Definition on Page 3*).
- (3) Published and/or documents prepared by commercial printing shops will be based on a "document charge" if the entire document is requested. The department will set the fee, to recover costs.
- (4) Copies of "general category" audiocassettes will be \$5.00/tape, provided the department has the ability to produce copies. If the City provides the cassette, a charge of \$3.00 will be added. Special category audiotapes will be copied at a fee set by departmental fee schedules.
- (5) Copies of "general category": "videocassettes will be \$7.50/tape, provided the department has the ability to produce copies. If the City provides the videotape, a charge of \$3.00 will be added. Special category videotapes will be copied at a fee set by departmental fee schedules.
- (6) Departments may set document fees for specific documents contained in their departments, such as maps, plats, etc. A fee schedule will be posted in each department – for those departments that have an adopted fee schedule. For records not specific to a department, the departmental fee schedules should not conflict with the specific charges listed in this section.
- (7) Copies of computer generated documents or electronic information will be charged as follows (M.C.A. 2-6-110):
 - (a) the City's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;
 - (b) expenses incurred by the City as a result of mainframe processing charges;
 - (c) expenses incurred by the City for providing on-line computer access to the person requesting access;
 - (d) other out-of-pocket expenses directly associated with the request for information; and

- (e) the hourly rate of \$10.00/hour for each hour, or fraction of an hour, after one-half hour of copying service has been provided.
- (8) Copy fees will NOT be charged to other cities requesting materials.
- (9) Copies for other governmental agencies or professional organizations will be provided on a "reciprocal" basis; if they charge us, they will be charged on same basis.
- (10) The certification charge will be \$2.00. (M.C.A. 2-6-103).
- (11) A request may be filled at no charge, if the individual requesting the record is the subject of the record or is deemed to be indigent and is deemed unable to pay.
- (12) No fees will be charged for inspection or review of public records.
- (13) Payment for charges must be received for copies released to the requester, whether in person, by mail or by FAX. Billing for copies is permissible if the department has a billing & collection procedure in place.
- (14) These fees may be subject to adjustment at any time due to material costs.

EXEMPTIONS:

The following records are exempt from public disclosure UNLESS by subpoena or court order OR access is subject to restrictions as cited in parentheses:

- (1) Library patron records. (M.C.A. 22-1-1101.)
- (2) Medical records (M.C.A. 7-1-4144).
- (3) Records concerning a current or former employee or applicant for employment with, that would disclose the individual's home address, home telephone number, social security number, marital status, payroll deductions, insurance coverage, etc.
- (4) Performance evaluations. (M.C.A. 7-1-4144).
- (5) Certain donor records, provided donor requests anonymity.
- (6) Certain law enforcement records (M.C.A. 7-1-4144).
- (7) Ownership or pledge of public obligations (M.C.A. 17-5-1106).
- (8) Criminal justice records (M.C.A. 44-5-301 - 44-5-311).
- (9) Accident reports (M.C.A. 61-7-114).

DEPARTMENTAL RECORDS LISTS:

Departmental Lists of Routine and Non-Routine Public Information are attached for reference and made a part hereof.

This policy shall become effective immediately.

Administrative Order #51

Dated this _____ day of _____, 1997.

Mark S. Watson, City Administrator