

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE NO. 2018 - 002

**ORDINANCE AMENDING CHAPTER 2.55 PUBLIC RECORDS DISCLOSURE
OF THE KITTITAS COUNTY CODE**

WHEREAS, the Board of County Commissioners declares that correct responses to requests pursuant to the Public Records Act RCW 42.56 are of vital importance; and

WHEREAS, the process for such responses are largely a matter of and must conform to State law; and

WHEREAS, the purpose of this chapter is to provide the public full access to identifiable records concerning the conduct of government, yet remaining mindful of individuals' privacy rights; protect public records from damage or disorganization; and attempt to prevent excessive interference with essential governmental functions and not to create or otherwise establish or designate any particular class or group of person who will or should be especially protected or benefited by this Ordinance; and

WHEREAS, nothing contained in this Ordinance is intended to be nor shall be construed to create or form the basis for any liability on the part of Kittitas County, or any of its officers, employees, or agents, for any injury or damage resulting from the failure of any person subject to Chapter 2.55 of the Kittitas County Code to comply with this Ordinance, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of the above referenced Chapter on the part of Kittitas County, or any of its officers, employees, or agents; and

WHEREAS, a public hearing was held on January 2, 2018 and the public was provided due notice and opportunity to provide testimony on the proposed amendment to the ordinance; and

WHEREAS, the Board of County Commissioners of Kittitas County hereby adopts this Ordinance pursuant to and by the authority of Sections 36.01.030 and 36.32.120 of the Revised Code of Washington and Article 11, §11 of the Washington Constitution to enact regulatory measures to preserve, promote, and improve the public health; and

NOW, THEREFORE, BE IT ORDAINED that the Board of County Commissioners adopt this Amendment to Chapter 2.55 of the Kittitas County Code to read as follows, and the Information Technology Department shall forthwith change the relevant portion of the County's Official website to reflect those changes;

AND ALSO BE IT ORDAINED that the Office of the Prosecuting Attorney, unilaterally and without any action of the Board of County Commissioners, may direct the Information Technology Department to correct any scrivener's error found hereafter.

2.55.010 Authority and Purpose.

1. Chapter 42.56 RCW, the Public Records Act ("PRA"), requires Kittitas County to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public records" as 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 Kittitas County.
2. The purpose of the act is to:
 - a. provide the public full access to identifiable records concerning the conduct of government, yet remaining mindful of individuals' privacy rights;
 - b. protect public records from damage or disorganization;
 - c. attempt to prevent excessive interference with essential governmental functions.
3. The purpose of this ordinance is to establish procedures and inform the public as to how Kittitas County ("County") will give assistance in providing full access to public records. These rules incorporate best practices for compliance with the act and are based upon the Model Rules of the Washington State Attorney General.
4. All County departments, divisions, bureaus, boards, committees, commissions and officers will follow these procedures. (Ord. 2018-~~002~~, 2018).

2.55.020 Agency Description - Contact Information - Public Records Officer.

1. As a political subdivision of the State of Washington, the County is subject to the act. The County offices, departments, bureaus, boards, committees, commissions, elected officials, and other agencies of the County are agencies subject to the act. For the purpose of this ordinance, the term "County" includes any applicable County agency. The term "County agency" refers to and includes all County Offices, Departments, and Boards and Commissions. Any person seeking access to public records or assistance with making a public records request of the County, shall contact the public records officer of the applicable County agency. Each County agency is independent for the purposes of complying with and responding to requests pursuant to the PRA. For example, when seeking records from the Kittitas County Assessor's Office, the requestor would contact the public records officer or the officer's designee at the Assessor's office. Records requests directed to any board or commission shall be made to the Office or Department of which that board or commission is a component. Court files and other records at the judiciary may not be subject to the Public Records Act or to this Ordinance, at least to the extent set forth in *Nast v. Michels*, 107 Wn.2d 300 (1986) and *Spokane & Eastern Lawyer v. Tompkins*, 136 Wn.App. 616 (2007), and disclosure of such records may be subject to the common law and to applicable court rules, specifically GR 31 and GR 31.1, and orders. Therefore, this ordinance does not address access to court records.
2. A list of addresses, telephone and fax numbers of public records officers for agencies of Kittitas County are posted on the County's website.
3. The applicable public records officer or designee will oversee compliance with the act and facilitate identification of records which are available for disclosure. The term "designee" is included in the term "public records officer" and herein incorporated by reference for the purpose of this ordinance. (Ord. 2018-~~002~~ 2018).

2.55.030 Availability of Public Records.

1. **Records available on County Website.** Many records are available on the Kittitas County website. Requesters are encouraged to view any documents available on the website before submitting a records request.
2. **Hours for Inspection of Records.** Public records are available for inspection and copying during the County's normal business hours and may be viewed at the County agency holding such records.
3. **Records Index.**
 - a. **General County Records Index.** No general County records index exists. The Kittitas County Board of County Commissioners finds that maintaining a general index is unduly burdensome and would interfere with agency operations for the County and its agencies. Kittitas County employees generate hundreds of records on a daily basis that include final opinions and orders made in the adjudication of cases, statements of policy, interpretations of policy, administrative manuals, instructions to staff that affect members of the public, planning policies and goals, interim and final planning decisions, factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, factual information derived from tests, studies, reports, or surveys, and correspondence and materials referred to therein relating to regulatory, supervisory, or enforcement responsibilities. Virtually every County agency would be required to devote at least one full-time employee exclusively to the task of collecting, reading, categorizing, indexing, and maintaining a current index of such records. In addition, the time required by other employees to ensure that records are forwarded to the designated employees for indexing and communicating with the designated employee regarding the purposes of the records would be substantial. Due to the lack of available resources to devote to such an endeavor, creating an index would be unduly burdensome and would unduly interfere with agency operations.
 - b. **County Agencies Records Index.** Any indexes County agencies have created for departmental use must be provided.
4. **Protection of Records.** The County will take reasonable steps to protect records from damage and disorganization. A requester shall not take original records from County offices.
5. **Backup and security copies.**
 - a. In order to prevent excessive interference with essential functions of the County, the County shall not search backup or security systems for copies of public records when the originals of such records have been identified, located and are available for inspection and/or copying.
 - b. Access to public records does not include access to County computer systems or terminals except for those terminals, if any, which may be specifically designated for public use. (Ord. 2018-~~602~~, 2018).

2.55.040 Making a Request for Public Records.

1. Persons wishing to inspect or obtain copies of public records of any County agency should make the request in writing using the County's standard request form and deliver it by U.S. mail, fax, email, or in person. The requester can also fill one out at the applicable County agency. The form shall be made available at each County agency and on-line at the County's website. The request should be addressed to the public records officer of the applicable County agency. The public records officer will document any requests received verbally during business hours. Any verbal requester will receive a copy of this County

policy along with the responsive documents to the request. All requests should include the following information:

- a. legal name of requester;
 - b. mailing address of requester;
 - c. other contact information, including telephone number, fax number, and any e-mail address;
 - d. reasonable description of the public records adequate to locate the records;
 - e. date and time of day of the request; and
 - f. signature of the requester.
2. Persons seeking public records for inspection and copying from a County agency may seek assistance from the public records officer of the applicable department.
 3. If the requester wishes the County to make copies of the records instead of simply providing for inspection, the requester shall so indicate and shall make arrangements to pay for the copies. The requester shall pay a deposit of 10 percent of the copy cost estimated by the public records officer for large requests. Fees are set pursuant to KCC 2.55.070.
 4. Persons seeking public records that include a list of individuals must sign a declaration under penalty of perjury certifying that the records will not be used for any commercial purpose (profit-expecting activity) prohibited by RCW 42.56.070(9) unless otherwise specifically authorized by other law. If the requester does not sign the declaration, the County is prohibited by law from providing the list.
 5. Persons requesting public records prohibited from disclosure by other laws under particular circumstances must sign a declaration under penalty of perjury certifying facts sufficient to convince the public records officer that legal requirements for disclosure have been met. (Ord. 2018-~~012~~, 2018).

2.55.050 Processing of Public Records Requests - General.

1. **Acknowledging Receipt of Request.** Within five (5) business days of receiving a request, the public records officer will acknowledge receipt of the request and do one or more of the following:
 - a. Make the records available for inspection or copying;
 - b. Provide in writing and mailed, emailed, or delivered to the requester, a reasonable estimate of time when records will be available;
 - c. Ask for a clarification from the requester if a request is unclear or does not sufficiently identify the records. Such clarification may be sought and provided by telephone, but it is desirable to confirm such clarifications in writing. The public records officer must provide, but may revise the estimate of when records will be available based on this clarification;
 - d. Deny the request, in whole or in part, with a written explanation as to why the request was denied.
2. **Failure to Respond.** The County intends to comply and honor all public disclosure requests to the greatest extent possible. If the County has failed to respond to a request for public disclosure, agencies would like citizens to let the designated public records officer know so the County can have the opportunity to provide the information that is wanted.
3. **Protecting Rights of Others.** In the event that the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to those third parties. Such notice should be given to make it possible for those affected persons to either:

- a. contact the requester and ask him or her to revise the request; or
- b. seek an order from a court to prevent or limit the disclosure.

The notice to the affected persons will include a copy of the request.

4. **Records Exempt from Disclosure.** Some records are exempt or prohibited from disclosure by law, either in whole or in part. If the County believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption for withholding the record or the portion of the record. If only a portion of a record is exempt from disclosure but the remainder is not, the public records officer will redact the exempt portions, provide the nonexempt portions, and explain to the requester why portions of the record are being redacted.
5. **Inspection of Records.**
 - a. Consistent with other demands, the County shall promptly provide space to inspect public records.
 - b. The County agency will notify the requester that he or she should contact the agency to make arrangements to claim or review the records. If the requester fails to:
 - i. claim or review the records within a 30-day period; or
 - ii. make other arrangements satisfactory to the County, the County may close the request and re-file the assembled records.
6. **Providing Copies of Records.** After inspection is complete, the public records officer will provide the requested copies or arrange for copying upon a deposit of at least 10 percent of the estimated copy cost.
7. **Providing Records in Installments.** If a request is for a large number of records, the public records officer may inform the requester that the records will be provided for inspection and copying in installments. Copy charges of the preceding installment will be paid completely before the next installment is produced. If, within 30 days of availability to the requestor, the requester fails to:
 - a. inspect the entire set of records or one or more installments; or
 - b. pay the balance of the copying cost of any installment, the public records officer may discontinue any remaining search and close the request. The requester will be notified that due to the failure to respond to the readied documents responsive to the request, the public disclosure request will be closed and the requester may submit a new request if desired.
8. **Closing Withdrawn or Abandoned Request.** When the requester either:
 - a. withdraws the request; or
 - b. fails to inspect the records; or
 - c. fails to pay the required deposit or final payment, the public records officer will close the request and so inform the requester. Subsequently, the County will not provide any copies for that request to the requester until the requester has paid any unpaid bill for previously requested copies.
9. **Later Discovered Documents.** After the County has provided all available records, if the County becomes aware of additional responsive documents that existed at the time of the request, it will promptly inform the requester of the additional documents and provide them on a reasonable basis. The County is not obligated by law to provide records that were created after the request nor will the County accept or treat a request as an on-going disclosure obligation beyond the date of request.
10. **Protection of Records and Essential Governmental Functions.**

- a. Public records shall be made available without disrupting essential functions of the agencies.
- b. An agency may follow a reasonable schedule regarding retrieval of a record from an off-premises storage site so that no more than one trip per week to the remote site is required.
- c. The precise time for copying must remain flexible and will depend upon the work schedule for that day.
- d. With regard to video or audio recordings, the requester must make prior arrangements for review. A staff member will be assigned to operate the County recording equipment necessary to either listen to or rerecord the original recording tape to protect originals. The public records officer may limit the maximum time allowed during any working day for supervised review to avoid excessive interference with the agency's other essential functions.
- e. Review of other original records shall be done only in the immediate presence of and under the supervision of a County employee responsible for protecting the originals against damage, alteration, or disorganization by the requester. The public records officer may limit the maximum time allowed during any working day for supervised review to avoid excessive interference with the agency's other essential functions. When the time needed for this purpose exceeds two hours, time periods on a future day or days may be assigned. (Ord. 2018-002, 2018).

2.55.060 Exemptions.

1. The act provides exemptions for certain types of documents from public inspection and copying. In addition, documents are exempt from disclosure if any other Washington statute exempts or prohibits disclosure. Exemptions outside the act that restrict the availability of some documents held by the County for inspection and copying include, but are not limited to, those set forth for in the most recent list posted on the web site of the Municipal Research Service Center, Public Records Act**, Appendix C, and which is incorporated herein by reference. The list is available for inspection and copying from the applicable public records officer.
2. The County is prohibited by statute from disclosing lists of individuals for commercial purposes.
3. If the public records request falls within one of the exceptions to the law requiring disclosure, a formal written request for the record should be made. The formal written request helps the County make sure that its decision to disclose or withhold a public record is made properly and that the requester obtains the appropriate public records.
4. Some of the records of the County are protected by the attorney-client privilege and/or the attorney work product doctrine. The Prosecuting Attorney, in the course of representing County elected officials or agencies may, at times, possess materials or copies of materials from such agencies that are exempt from disclosure.
5. Pursuant to RCW 42.56, when the County makes available or publishes any public record, it reserves the right to delete identifying details when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by law. The public records officer will explain such deletion in writing. (Ord. 2018-002, 2018).

2.55.070 Costs of Providing Copies of Public Records.

1. No fee will be charged for the inspection of a public record.

2. No fee will be charged for searching for public records, redacting portions of the record which are exempt from disclosure, or preparing an index of exempt documents.
3. If a request is sent to a private copy shop for copying, the fee shall be the actual charge imposed for copying, plus applicable taxes and shipping costs.
4. Payment shall be made by exact cash or by check/money order payable to "Kittitas County." The public records officer may require that all charges be paid in advance of the release of the copies.
5. The public records officer may waive the fee for pages fewer than what is the applicable County agency's minimum page limit where the request was submitted.
6. The fee for providing copies of certain public records may be set by state statute or County ordinance. For example, state law sets the fee for death certificates (RCW 70.58.107); court papers (RCW 3.62.060) (Chapter 36.18 RCW and CR 17(4)); duplication of electronic tapes of a court proceeding (RCW 3.62.060); traffic accident reports (RCW 46.52.085); criminal history information (RCW 10.97.100); and various fees of County Officers (RCW 36.18). Kittitas County Code sets fees for recording certain documents with the Auditor's Office (KCC 2.56). Where County code, state or federal law sets a fee for providing a copy of a record, that fee will be charged.
7. At the option of the public records officer, electronic records may be printed out prior to copying and delivery. If the electronic record is large and not capable of being printed out, then the document may be provided electronically in the format in which the record is maintained by the County or in Adobe PDF format. There is no obligation of the County to convert an electronic record to a different format.
8. **Fee Schedule.** Kittitas County has determined on behalf of all of its included Offices and Departments that the tasks required to calculate the actual cost of providing records other than customized access as described below would be unduly burdensome. The cost variations across departments and their duties and other economic variables, plus the time and associated costs needed to assess the actual cost to the detriment of other duties of employees, and the need to regularly update the assessment, is a burden that should not be taken on. Unless a fee is fixed by another federal or state law or county ordinance, the following default statutory fee schedule is applicable:
 - o 8-1/2 by 14 or smaller B/W copies: \$0.15 per page;
 - o 8-1/2 by 14 or smaller B/W computer printouts \$0.15 per page;
 - o Oversized or color copies/computer printouts \$1.00 per page;
 - o Color maps \$5.00 per square foot;
 - o All items sent to private copy shop: Actual charge plus postage and delivery;
 - o Compact disc \$1.00 for each compact disc plus the time for copying the information;
 - o DVD \$1.50 for each DVD plus the time for copying the information;
 - o Actual cost of the device for any other form of external storage device used to transmit records, such as "thumb drives" or external hard drives, plus copying time
 - o Postage is actual charge for mailing copies of requested records;
 - o Fax (8-1/2 by 11 only) \$1.00 per page;
 - o Envelopes \$1.00 each

- A scanning fee of \$0.10 per page may be charged when the requested documents are not already available in electronic format;
 - Five cents (\$0.05) per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;
 - Ten cents (\$0.10) per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The records shall be provided in the most efficient manner available to the agency in its normal operations;
9. **Customized Access Charge.** A customized service charge may only be imposed if the County agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by that agency for other agency purposes.
 10. **Costs of Mailing.** The County will also charge actual mailing costs, including the cost of the shipping container or envelope if the requester requests mailing.
 11. **Waiver of Payment.** The County, including any of its Offices and Departments, may waive the cost of copying and mailing for reasonable cause.
 12. **Outside Contracts for Copying.** The applicable agency may arrange for copying by County contractors charged with preserving and protecting public records, instead of copying requested records using County services. In such event, the cost of copying shall be the contract charges, and such charges shall be paid by the requester directly to the County. The requester must pay the copy estimate first before copying will take place. If the requester made a deposit in advance of copying, any unapplied portion of the deposit will be refunded to the requester, provided that the contract charges are paid.
 13. **Repetitive Contracts.** The Kittitas County Board of County Commissioners may enter into contractual agreements with persons who intend to request access to public records available for disclosure to them on a continuous or regularly recurring basis. The terms of any contract executed in accordance with this Section will supersede and control over any otherwise applicable provisions of this Chapter, but shall not supersede or conflict with applicable state law. (Ord. 2018-~~012~~, 2018).

2.55.080 Review of Denial of Public Records.

1. **Petition for Internal Administrative Review of Denial of Access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing to the Prosecuting Attorney's Office for a review of the decision. When applicable, the petition should include a copy of or reasonably identify the written statement by the public records officer denying the request.
2. **Consideration of Petition of Review.** The public records officer shall promptly provide any relevant information to the Prosecuting Attorney's Office to review the decision. The Prosecuting Attorney's Office shall either affirm or reverse the denial within five business days following the receipt of the petition, or within such other time as is mutually agreeable to the County and the requester.
3. **Judicial Review.** Any person may obtain judicial review of a public records request denial pursuant to RCW 42.56.550 regardless of any internal administrative appeal. (Ord. 2018-~~012~~, 2018).

2.55.090 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 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 County beyond those imposed by state and federal law (Ord. 2018-~~002~~, 2018).

2.55.100 Severability.

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of the Chapter or the application of the Chapter to other persons or circumstances shall not be affected. (Ord. 2018-~~002~~, 2018).

ADOPTED this 2nd day of January 2018.

BOARD OF COUNTY COMMISSIONERS

KITTITAS COUNTY, WASHINGTON

Oliver St. B.

Vice Chair

[Signature]

~~Vice~~ Chair

[Signature]

, Commissioner



ATTEST:

CLERK OF THE BOARD

Julie A. Kjorsvik
Julie A. Kjorsvik

APPROVED AS TO FORM:

/s/Douglas R. Mitchell

Deputy Prosecuting Attorney