

TOWN OF NEWPORT LOCAL LAW #1 OF 2020

PROCEDURES FOR PUBLIC ACCESS TO RECORDS OF THE
TOWN OF NEWPORT UNDER THE FREEDOM OF
INFORMATION LAW

BE IT ENACTED by the Town Board of the Town of Newport, County of Herkimer, State of New York, as follows:

Section 1. Authority, Purpose and Scope

A. This local law is adopted pursuant to the authority granted by and in the Statute of Local Governments, the Municipal Home Rule Law, and Public Officers Law Article 6, and the regulations promulgated thereunder. Public Officers Law Article 6 is more commonly known as the Freedom of Information Law, and together with its rules and regulations, and as amended from time to time, it is hereinafter referred to as "FOIL."

B. The people's right to know the process of government decision-making, and the documents and statistics leading to determinations is basic to our society. This local law provides information concerning the procedures by which records may be obtained, and it is the stated purpose of this local law to direct Town personnel to furnish to the public the information and records required by FOIL, as well as other records otherwise available by law.

C. This local law applies to Town records and should not be deemed or construed to require the Town or the Records Access Officer ("RAO") to obtain records from other agencies or to create records that provide the information sought. This local law is designed to comply with the basic requirements of FOIL and be a guide to assist in the understanding of government and how records affect and influence policy and decision-making.

Section 2. Designation and Duties of Records Access Officer(s)

A. The Town designates its Town Clerk as Records Access Officer ("RAO"). The Town Clerk is free to appoint one of his or her Deputy Clerks as a RAO, subject to formal approval of such appointment by resolution of the Town Board.

B. RAOs shall have the duty of coordinating the responses of the Town to public requests for access in accordance with FOIL. In addition, the RAO shall also:

1. Develop and maintain reasonably detailed and up-to-date subject matter lists of the records and types of records in the possession of the Town.
2. If necessary, or upon reasonable request therefor, assist the requester in identifying requested records and crafting appropriate FOIL requests.

3. Upon locating the records, take one of the following actions: (i) make records available for inspection; or (ii) deny access to the records in whole or in part and explain in writing the reasons therefor.

4. Upon request for copies of records that are being made available: (i) provide copies of the records in the medium requested, if the Town can reasonably make such copy or have such copy made by engaging an outside professional service, provided that the requester pays or agrees to pay fees, if any, established in accordance with FOIL or Section 8 of this local law; (ii) upon request, certify that a record is a true copy; (iii) if unable to locate some or any portion of such requested records, certify in writing that the Town is not the custodian for such records or that the records cannot be found after a reasonably diligent search.

5. Establish a process or procedure whereby a person may arrange an appointment to obtain assistance in respect to FOIL or to inspect records. Such procedure shall include the name, position, address and phone number of the RAO or other persons to contact for the purpose of making an appointment.

C. The RAO shall determine first whether requested records exist, and then the RAO shall determine whether the request may be granted or must be denied in whole or in part due to exceptions contained in FOIL or due to statutes or obligations preserving confidentiality or non-disclosure. The RAO may consult with the attorney for the Town, the Committee on Open Government, the Association of Towns, or any other person or entity to provide assistance in making these determinations.

Section 3. Requests for Public Access to Records.

A. Requests for public access to records shall be accepted during all hours the Town Clerk's Office is regularly open for business.

B. FOIL requests shall be made to the RAO in writing. The RAO shall also accept requests for records and respond thereto by electronic mail when feasible, unless the requester seeks a response in some other form.

C. Any records requested must be identified or described with sufficient particularity so as to allow the RAO to locate and identify the records sought. "Sufficient particularity" generally includes information regarding applicable dates, file designations, document names or titles, types of records, information within the record sought (such as keywords, resolutions, approvals, etc.), or the office, officer, or body that made such record, or any other reasonable identifying information.

D. All requests shall state whether records are desired to be examined or whether copies of the records are requested. Electing to examine records does not preclude a later request for copies or reproduction.

- E. The RAO shall respond to a request within five business days of receipt by:
1. Granting or denying access to records in whole or in part; or
 2. Acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than 20 business days after the date of the acknowledgment.
 3. However, if it is reasonably known or believed that the records cannot be obtained or produced within 20 days then the RAO shall provide a statement in writing indicating the reason for the inability to grant or deny the request within such 20 days, and the RAO shall further provide a date certain, within a reasonable period of time under the circumstances of the request, when the request will be granted or denied in whole or in part.
- F. If the request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within 20 business days of such acknowledgment, but circumstances prevent disclosure within that time, The RAO shall provide, within such 20-day period after acknowledgment:
1. A statement in writing specifying the reason for the inability to meet the production date noticed; and
 2. An alternate date certain for production, which date shall be within a reasonable period of time under the circumstances.
- G. In determining a reasonable time for granting or denying a request under the circumstances of a request, the RAO shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed or protected information redacted therefrom, the number of requests received by the Town, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time frame.
- H. If records are maintained on the internet the requester shall be informed that the records are accessible via the internet and can be further printed or provided in another information storage medium upon payment of any applicable fees.
1. A failure to comply with the time limitations set forth above constitutes a denial of a request that may be appealed.

Section 4. Denial of access to records.

- A. A denial of access to records shall be in writing stating the reasons therefor. Such writing shall also advise the requester of the right of appeal, the deadline for an appeal, and the name and address of the body or officer to whom an appeal shall be directed.

B. If a denial occurs due to a person requesting records that cannot be found or replied to because the request, or a portion of the request, does not reasonably describe the records sought, the RAO shall inform the requester that they can seek assistance from the RAO to help enable such person to frame a request reasonably describing such records and then submit an updated FOIL request.

C. If the Town or the RAO fails to comply with the time limitations for records production as set forth in this local law or in FOIL, such failure(s) shall also be deemed a denial of access effective on the date of non-compliance. Non-compliance shall include situations in which an officer or employee:

1. Does not grant access to the records sought, does not deny access in writing, or does not acknowledge the receipt of a request within 5 business days of the receipt of the request.
2. Acknowledges the receipt of a request within 5 business days but does not furnish an approximate date when the request will be granted or denied in whole or in part.
3. Furnishes an acknowledgment of the receipt of a request within 5 business days with an approximate date for granting or denying access in whole or in part, or responds to a request stating that more than 20 business days is needed to grant or deny the request in whole or in part, and the date provided is unreasonable under the circumstances of the request.
4. Does not respond to a request within a reasonable time after the approximate date given or within 20 business days after the date of the acknowledgment of the receipt of the request.
5. Determines to grant a request in whole or in part within 20 business days of the acknowledgment of the receipt of a request, but does not do so, unless the Town provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part.
6. Does not grant a request in whole or in part within 20 business days of the acknowledgment of the receipt of a request and does not provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part.

D. Some of the principal reasons for denial are set forth in Public Officers Law Section 87(2), and within FOIL certain exceptions to disclosure and production include records or portions thereof that:

1. Are specifically exempted from disclosure by state or federal statute or regulations.
2. If disclosed would constitute an unwarranted invasion of personal privacy, including but not limited to: (i) disclosure of employment, medical or credit histories, or personal references of applicants for employment; (ii) disclosure of items involving the medical or

personal records of a client or patient in a medical facility; (iii) sale or release of lists of names and address if such lists would be used for commercial or fund-raising purposes; (iv) disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the Town in maintaining it; (v) disclosure of information of a personal nature reported in confidence to the Town and not relevant to the ordinary work of the Town (vi) information of a personal nature contained in a workers' compensation record; or (vii) any records disclosed or disclosable in connection with any name or address that may be or become personally identifying information, the disclosure of which is prohibited by Article 6-A of the New York Public Officers Law, more commonly known as the Personal Privacy Protection Law ("PPPL"), and further FOIL rules pertaining to the PPPL are set forth below.

3. If disclosed would impair present or imminent contract awards or collective bargaining negotiations.
4. Are trade secrets or are submitted to the Town by a commercial enterprise, or derived from information obtained from a commercial enterprise, and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.
5. Are compiled for law enforcement purposes and which, if disclosed, would: (i) interfere with law enforcement investigations or judicial proceedings; (ii) deprive a person of a right to a fair trial or impartial adjudication; (iii) identify a confidential source or disclose confidential information relating to a criminal investigation; or (iv) reveal criminal investigative techniques or procedures, except routine techniques and procedures.
6. If disclosed, could endanger the life or safety of any person.
7. Are inter-agency or intra-agency materials, except: (i) statistical or factual tabulations or data; (ii) instructions to staff that affect the public; (iii) final Town policy or determinations; or (iv) external audits, including but not limited to audits performed by the New York State Comptroller and the federal government.
8. Are examination questions or answers which are requested prior to the final administration of such questions.
9. If disclosed, would jeopardize the Town's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures.
10. Are photographs, microphotographs, videotapes or other recorded images prepared under authority of the New York State Vehicle and Traffic Law.

Section 5. Personal Privacy Protection Requirements and Records Redaction

The PPPL (and related laws and regulations) mandates that certain information about persons may not be disclosed, including under FOIL or by municipalities generally, even if the information may otherwise be public or obtainable. Thus, for example, even though a person's name and address can be obtained from an official public tax roll, it is still improper and a potential or actual violation of law for the Town to disclose the name and address of any person in reply to a FOIL request (though there are exceptions as well). Therefore, to inform the public and provide guidance to the RAO and others concerning the PPPL and personal privacy laws, the following protection and redaction rules are implemented as part of this local law:

1. For purposes of this policy "personal information" means any information concerning a natural person, as opposed for instance to a corporate entity, which, because of name, number, symbol, mark, or other identifier, can be used to identify that natural person. To prevent an unwarranted invasion of personal privacy the RAO and all Town officers and employees shall observe guidelines for the non-disclosure or redaction of identifying details from specified records according to rules promulgated by the New York State Committee on Open Government, or as otherwise required by law.
2. In the absence of specific guidelines for a particular situation, personal information and identifying details shall be not be disclosed, or shall be redacted and made unreadable and nonrecoverable, whenever such disclosure may constitute an unwarranted invasion of personal privacy. In addition to FOIL exemptions, this shall include the following:
 - a. Disclosure of employment, medical or credit histories or personal references of employees and applicants for employment.
 - b. Any person's social security number or any significant portion thereof.
 - c. Disclosure of items involving the medical or personal records of any person or employee, including any medical facility records or medically-related records, including without limitations workers' compensation records, disability records, records pertaining to disability accommodations, and other medical records protected by HIPAA (the Health Insurance Portability and Accountability Act of 1996, as now codified or hereafter amended).
 - d. Disclosure of lists of names and addresses if such lists would be used for commercial or fund-raising purposes.
 - e. Disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject person and such information is not relevant to the work of the agency or person requesting or maintaining such records.

f. Disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

2. The non-disclosure or redaction rules stated above shall not apply when the records are actually redacted, when the person to whom a record pertains consents in writing to disclosure, or when a person, upon presenting reasonable proof of identify, seeks their own records, or when otherwise required by law.

3. Voicemail, email, computers, computer networks, digital media and storage and transfer devices, computer files, software programs, and all communications created on, received by, stored on or transmitted through those systems are the sole and exclusive property of the Town. Records, data, files, software, and all electronic communications contained in these systems likewise are the property of the Town. These systems and their contents are subject to inspection, examination and monitoring by authorized Town officers and personnel (or authorized third-party contractors) at any time and without notice. The authorized personnel are the Town Supervisor, the in-house IT, Clerk and Deputy Town Clerk, and any of their designees as indicated by a written document bearing their original signature(s). No organic data or metadata shall be supplied in any native format unless it is cleared of any personal information.

4. Town officers and employees are advised that the computers, computer networks, email systems, telephone systems (including voicemail), and other electronic communications systems (and all communications created on, received by, stored on or transmitted through those systems) are the sole and exclusive property of the Town and that there is and should not be any expectation of privacy regarding any such documents, records, or communications. Passwords are only intended to prevent unauthorized access to email, computer files, or voicemail, but the town reserves the right to allow authorized persons to access messages and files on the Town-owned systems or telephones at any time, and all employees must supply their current passwords to the Town Supervisor, who shall keep the same secured from third party review or capture.

5. The collection of information through Town websites, servers, and telephones, and similar devices used by the public and by the Town are further subject to the provisions of the Internet Security and Privacy Act. Participation in an online transaction resulting in the disclosure of personal information to the Town by the user, whether solicited or unsolicited, constitutes consent to the collection and disclosure of such information by the Town for the purposes reasonably ascertainable from the nature and terms of the transaction. None-the-less, if any such personal information is the subject of a FOIL request, the above-noted rules of non-disclosure or redaction shall apply unless such disclosure is:

a. Necessary to perform the statutory duties of the Town, or necessary for the Town to operate a program authorized by law, or authorized by state or federal statute or regulation.

- b. Made pursuant to a court order or otherwise compelled by law.
- c. For the purpose of validating the identity of the user.
- d. Of information to be used solely for statistical purposes that is in a form that cannot be used to identify any particular person.

6. While Town officers and employees are prohibited from misusing or improperly disclosing personal information, these policies shall not provide any claim or cause of action should improper disclosure occur, and the information provided in this privacy policy should not be construed as giving business, legal, or other advice, or warranting that the Town's systems are fail proof, or that all information provided through the Town's website or hosted on any Town servers or media are not subject to being improperly accessed by any person. Town officers and employees and the public are warned that the Town utilizes telephonic and facsimile transmissions and email and web based correspondences in the provision of municipal services, and these are each and all digital forms of communication that carry unique risks, including, but not limited to, the accidental, unlawful, or improper interception thereof by unintended recipients and the transmission of viruses, malware, and other deleterious codes.

Section 6. Lost, Missing, or Destroyed Records

Upon any failure to locate any requested records the RAO shall either certify that the Town of Newport is not the custodian for such records, that the records of which the Town of Newport is a custodian cannot be found after a reasonably diligent search, or that the records requested have been destroyed pursuant to NYS Archives and related rules regarding document retention schedules and document destruction.

Section 7. Location for Production of Records

Records shall be available for public inspection at the Office of the Town Clerk during regular office hours.

Section 8. Fees and Copies

A. Upon receipt of a request for copies of records the RAO shall make such copies available upon payment of established fees set in accordance with this local law and the requirements of FOIL.

B. Original Town records may not be removed from Town buildings under or in relation to this local law, except by or under the supervision of the RAO for purposes of compliance herewith, such as to make copies.

C. There shall be no fee charged for inspections of records, searches for records or for any general administrative costs, or for any certifications required under this local law or FOIL unless authorized by law. Nor may any fee be charged for an appeal.

D. The Town Board may by resolution update and provide for additional fees for photocopying and related goods and service costs incurred under or in relation to requests submitted under this local law and FOIL, including the provisions of this Section 8 (the "Fee Schedule"); however, such Fee Schedule shall not charge any costs or expenses prohibited by FOIL or other requirements of New York law. Unless otherwise governed by applicable law or by any updated Fee Schedule hereafter adopted, fees shall be charged at a rate of \$0.25 per page for photocopies not exceeding 9 by 14 inches. The actual cost for copying other records, such as electronic records, may be charged as follows:

1. A reasonable per page rate for oversized paper of not less than \$0.25 per page, and not greater than \$1.00 per page or the actual costs of reproduction per page, unless the document must be sent to an outside agency for reproduction.
2. An amount equal to the hourly pay attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record, including the cost of redaction or preparing copies with confidential or other non-disclosed matters protected or removed, except that no fee shall be charged unless at least two hours of an employee's time is needed to prepare the copy;
3. The actual cost of the storage devices or media (such as a computer disk) provided to the person making the request. If the requester provides its own media, then there shall be no charge.
4. If information or reproduction technology equipment is inadequate to prepare a copy of the record, or if the Town for some other reason is unable to prepare a copy of the record itself, the actual cost to the Town of engaging an outside professional or service company to prepare a copy.
5. However, no amount may be charged for an employee's time or for use of an outside professional or service company unless the requester is informed of the fee and its estimated cost in advance. If the requester rejects such amount the requester may still examine such record(s) but may not require a copy at such time.

E. The foregoing provisions regarding fees and copying expenses do not apply when a different fee is otherwise prescribed by FOIL or any applicable statute.

Section 9. Appeals

A. The Town Supervisor is hereby designated as the person who shall determine appeals regarding denial of access to records, as well as any other appeals under FOIL and this local law, and such appeals shall be delivered to the following mail or electronic addresses:

1. By mail addressed to Town Supervisor, P.O. Box 519, Newport New York 13416.
 2. By email to the address posted on any FOIL notices and bulletins posted upon the Town Clerk's official signboard, as updated or amended from time-to-time.
- B. All appeals shall be filed within 30 days of the date of any reply denying a FOIL request in whole or in part, or within 30 days of any other event giving rise to an appeal.
- C. A written appeal shall state the following:
1. The date of the appeal, the date of the request for records, and the date of any denial of records or other applicable date or time that gives rise to the appeal.
 2. The specific requests denied and the records to which the requester was seeking access.
 3. So far as known, the reasons for the denial of access to the requested records, including whether the denial was in writing or due to the failure to provide records promptly.
 4. The name and return address of the requester.
- D. The time for deciding an appeal shall commence upon receipt of a written appeal that meets the above informational guidelines, and the determination upon the appeal shall be provided to the appellant-requester within 10 business days of receipt of an appeal. A failure to determine an appeal within 10 business days of its receipt by granting access to the records sought or by fully explaining the reasons for any further denial in writing shall constitute a denial of the appeal.
- E. A copy of every appeal or determination upon appeal shall be filed with the New York State Committee on Open Government as required by FOIL.

Section 10. Public Notice

- A. A notice containing the title or name and business address of each RAO and each appeals person or body, and the location where records can be seen, shall be posted in the Town Clerk's Office in accord with FOIL.
- B. Such notice shall also be posted upon the Town's website and the Town Clerk's official signboard, and such online posting shall further state or include the times and places that public records are available for inspection, information on how to request records in person, by mail, or by email, and a link to the website of the New York State Committee on Open Government.

Section 11. Construction

By listing references to and rules and exceptions to FOIL production and disclosure in this local law the Town is seeking only to provide an informative process for the public. In all such cases actual reference to FOIL is required for the exact wording of the law, including updates or amendments to the New York State Public Officers Law. When required by law, the terms and requirements of FOIL as to document disclosure exemptions and exceptions and reproduction and copying fees shall be controlling, and the terms of this local law shall yield when in conflict therewith.

Section 12. Severability

If any provision hereof, or the application thereof to any person or circumstance, is adjudged invalid by a court or tribunal of competent jurisdiction, such provision shall be deemed severed and any such judgment shall not affect or impair the validity of the other provisions of this local law (which shall remain in force and effect) or the application hereof to other persons and circumstances.

Section 13. Effective Date

This local law shall take effect immediately upon filing with the Secretary of State of New York.