

CHAPTER 10

PUBLIC RECORDS AND DOCUMENT RETENTION

10.1 DEFINITIONS. In this Ordinance, the following words and phrases shall have the designated meaning unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) Authority. “Authority” means any of the following Town entities having custody of a Town record: an office, elected official, agency, board commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.

(2) Custodian. “Custodian” means that officer, department head, division head or employee of the Town designated under Section or otherwise responsible by law to keep and preserve any Town records or file, deposit or keep such records in his or her office, or is lawfully in possession or entitled to possession of such public records and who is required by this Section to respond to requests for access to such records.

(3) Record. “Record” means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or reserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. “Record” includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. “Record” does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public authority other than a public library which are available for sale, or which are available for inspection at a public library.

(4) Town. “Town” shall mean the Town of Black Earth, Dane County, Wisconsin, and its administrative subunits.

10.2 DUTY TO MAINTAIN RECORDS.

(1) Except as provided under Section 10.7, each officer and employee of the Town shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of which he or she or they may be lawfully entitled as such officers or employees.

(2) Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his or her successor all records then in his or her custody and the successor shall receipt therefor to the officer or employee, who shall file said receipt with the Town Clerk. If a vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted for by the Clerk, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

10.3 LEGAL CUSTODIAN(S).

(1) Each elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.

(2) Unless otherwise prohibited by law, the Town Clerk, or the Clerk's designee, shall act as legal custodian for all Town records, the Town Board, and for any committees, commissions, boards or other authorities created by ordinance or resolution of the Town Board, except that the Town Treasurer shall be the legal custodian for all records in the Treasurer's possession. In the event that the Town Clerk is not available, then the Town Clerk shall designate an employee of his or her staff to act as the legal custodian.

(3) For every authority not specified in Sections 10.3.1 and 10.3.2, the authority's chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his or her staff to act as the legal custodian.

(4) Each legal custodian shall name a person to act as legal custodian in his or her absence or the absence of his or her designee.

(5) The legal custodian shall have full legal power to render decisions and to carry out the duties of an authority under Subch. II of Ch. 19, Wis. Stats., and this Chapter. The designation of a legal custodian does not affect the powers and duties of an authority under this Section.

10.4 PUBLIC ACCESS TO RECORDS.

(1) **INSPECT AND COPY.** Except as provided in Section 10.6, any person has a right to inspect a record and to make or receive a copy of any record as provided in Se. 19.35(1), Wis. Stats.

(2) **AVAILABILITY.** Records will be available for inspection and copying during all regular office hours. If regular office hours are not maintained at the location where records are kept, the records will be available for inspection and copying upon at least forty-eight (48) hours advance notice of intent to inspect or copy.

(3) FACILITIES. A requester shall be permitted to use facilities comparable to those available to Town employees to inspect, copy or abstract a record.

(4) SUPERVISION AND REASONABLE RESTRICTION. The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged. No original public records of the Town shall be removed from the possession of the legal custodian.

(5) FEES AND COSTS. A requester shall be charged a fee to defray the cost of locating and copying records as prescribed in the Fee Schedule, except as follows:

(a) Elected and appointed officials of the Town shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.

(b) The legal custodian may provide copies of a record without charge or at a reduced charge where he or she determines that waiver or reduction of the fee is in the public interest.

(6) PUBLIC NOTICE. Pursuant to Sec. 19.34, Wis. Stats., and the guidelines therein listed, each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records or obtain copies of records, and the costs thereof. Each authority shall also prominently display at its offices, for the guidance of the public, a copy of Sections 10.4 through 10.6 of this Chapter. This Subsection does not apply to members of the Town Board.

10.5 ACCESS PROCEDURES.

(1) REQUEST.

(a) A request to inspect or copy a record shall be made to the legal custodian. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request.

(b) A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Sec. 19.37, Wis. Stats.

(c) Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request.

(d) No request may be refused because the request is received by mail, unless prepayment of a fee is required under Section 10. 5.5(f).

(e) A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(2) CUSTODIAN'S DETERMINATION.

(a) Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor. If the legal custodian, after conferring with the Town Attorney, determines that written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his or her request in a manner which would permit reasonable compliance.

(b) A request for a record may be denied as provided in Section 10.7. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons for denying the request is made by the requester within five (5) business days of the oral denial. Every written denial of a request shall inform the requester that, if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Sec. 19.37(1), Wis. Stats., or upon application to the attorney general or a district attorney.

10.6 LIMITATIONS ON RIGHT TO ACCESS.

(1) Sections 19.35(1)(am) and 19.36, Wis. Stats. provide a listing of the records exempt from inspection under this Chapter.

(2) As provided in Sec. 43.30, Wis. Stats., public library circulation records are exempt from inspection under this Chapter.

(3) In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the Town Attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, records described in Sec. 19.85(1), Wis. Stats.

(4) If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public before release. The custodian shall confer with the Town Attorney prior to releasing any such record and shall

follow the guidance of the Town Attorney when separating out the exempt material. If, in the judgment of the custodian and the Town Attorney, there is no feasible way to separate the exempt and nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

10.7 DESTRUCTION OF RECORDS.

(1) NON-UTILITY RECORDS. Town officers may destroy the following non-utility financial records of which they are the legal custodians and which are considered obsolete, after completion of any required audit by the Department of Revenue or an auditor licensed under Chapter 442, Wis. Stats. but not less than seven (7) years after payment or receipt of any sum involved in the particular transaction, unless a shorter period has been fixed by the Stat Public Records Board pursuant to Sec. 16.61(3)(e), Wis. Stats., and then after such shorter period:

- (a) Bank statements, deposit books, slips and stubs.
- (b) Bonds and coupons after maturity.
- (c) Canceled checks, duplicates and check stubs.
- (d) License and permit applications, stubs and duplicates.
- (e) Payrolls and other time and employment records of personnel included under the Wisconsin Retirement Fund.
- (f) Receipt forms.
- (g) Special assessment records.
- (h) Vouchers, requisitions, purchase orders and all other supporting documents pertaining thereto.

(2) UTILITY RECORDS. Town officers may destroy the following utility financial records of which they are the legal custodians and which are considered obsolete, after completion of any required audit by the Bureau of Municipal Audit or an auditor licensed under Chapter 442, Wis. Stats., subject to State Public Service Commission regulations, but not less than seven (7) years after the record was effective, unless a shorter period has been fixed by the Stat Public Records Board pursuant to Sec. 16.61(3)(e), Wis. Stats., and then after such shorter period, except that water stubs, receipts of current billings and customers' ledgers may be destroyed after two (2) years:

- (a) Contracts and papers relating thereto.
- (b) Excavation permits.

(c) Inspection records.

(3) Town officers may destroy the following records of which they are the legal custodians and which are considered obsolete, but not less than seven (7) years after the record was effective, unless a shorter period has been set by statute, and then after such period, or unless a shorter period has been fixed by the Stat Public Records Board pursuant to Sec. 16.61(3)(e), Wis. Stats., and then after such shorter period:

(a) Contracts and papers relating thereto.

(b) Correspondence and communications.

(c) Financial reports other than annual financial reports.

(d) Justice dockets.

(e) Oaths of Office.

(f) Reports of boards, commissions, committees and officials duplicated in the Town Board proceedings.

(g) Election notices and proofs of publication.

(h) Canceled voter registration cards.

(i) Official bonds.

(j) Police records, other than investigative records.

(k) Resolutions and petitions.

(4) STATE HISTORICAL SOCIETY. Unless notice is waived by the State Historical Society, at least sixty (60) days' notice shall be given the State Historical Society prior to the destruction of any record as provided by Sec. 19.21(4)(a), Wis. Stats.

(5) MEETING TAPES. Any tape recordings of a governmental meeting of the Town may be destroyed, erased or reused no sooner than ninety (90) days after the minutes of the meeting have been approved and published, if the purpose of the recording was to make minutes of the meeting.

10.8 PRESERVATION THROUGH MICROFILM. Any Town officer, or the director of any department or division of Town government may, subject to the approval of the Town Board, keep and preserve public records in his or her possession by means of microfilm or other photographic reproduction method. Such records shall meet the standards for photographic reproduction set forth in Sec. 16.61(7)(a) and (b), Wis. Stats., and shall be considered original records for all purposes. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of statute and of Sections 10.4 through 10.6 of this Chapter.