

City of Tontitown

Policy and Procedures when dealing with Arkansas Freedom of Information Act Request(s)

The Arkansas Freedom of Information Act (FOIA) Act 93 of 1967

The Arkansas Freedom of Information Act 93, of the Code of Arkansas, is the primary state law governing citizen access to public records and entry to meetings of public bodies. The Arkansas FOIA guarantees citizens access to public records held by public bodies, public officials, and public employees. By law, the Freedom of Information Act (FOIA) requires certain responses to requests depending upon the type of information requested.

The City of Tontitown and FOIA

With the goal of promoting an institutional culture for compliance with the laws of the Freedom of Information Act, the City of Tontitown adopted a Policy creating the FOIA procedures for personnel. The position of the FOIA Coordinator was established to lead the organization in handling the FOIA requests from citizens, and to implement FOIA awareness throughout the organization.

The Tontitown FOIA Office

For convenience the City of Tontitown FOIA Coordinator is currently located inside of the Tontitown Police Department. The FOIA Office is equipped with an area where those seeking public records may enter; submit FOIA requests, review records, and gain access to municipal programs or meetings.

Staff Responsibilities

All City of Tontitown employees, officials and officers are required to comply with FOIA. The general role and responsibilities of those listed individuals are outlined in this section as specified in the city Policy.

FOIA Coordinator - The FOIA Coordinator is responsible for coordinating the requests for public records for the City of Tontitown and dispersing those requests to the appropriate custodian of the records requested, except as specifically provided otherwise in the City Code, the decisions of the FOIA Coordinator are to be made independently. Upon the request of the FOIA Coordinator, the City Attorney shall provide general legal advice, including the City Attorney's opinion as to the disclosure or withholding of certain records in accordance with the requirements of the Act. The FOIA Coordinator will report on the status of the FOIA Office to City Council during the first regular City Council Meeting in January and July. The FOIA Coordinator is required to attend training when available.

City Mayor - The City Mayor appoints the FOIA Coordinator and when needed a FOIA Deputy Coordinator(s) who shall perform all the duties of the Freedom of Information Act Coordinator in the FOIA Coordinator's absence. The City Mayor may appoint such other deputies and support staff from among the employees as he/she finds necessary or appropriate.

Deputy FOIA Coordinator - The Deputy FOIA Coordinator is appointed by the City Mayor. The Deputy FOIA Coordinator will carry out all of the duties and responsibilities of the FOIA Office in the FOIA Coordinator's absence. The Deputy FOIA Coordinator is required to attend training when available.

Assistant FOIA Coordinators - The City Mayor may appoint staff to handle the duties and responsibilities of the FOIA Office in the absence of the FOIA Coordinator and the Deputy FOIA Coordinator. The assistants are required to attend training when available.

City Attorney - Upon request from the FOIA Coordinator, the City Attorney, or his/her designee, shall provide legal advice and assistance in making determinations as to whether documents are exempt under the Act. The City Attorney will consult with the City Mayor or FOIA Coordinator on legal matters pertaining to a specific request as needed.

FOIA Departmental Contacts - The head of each City Department must support the work of the FOIA Coordinator. The FOIA Coordinator will work directly with the Departmental Contacts in responding to requests for public records from the department. The Departmental Contacts are required to attend training when available.

Tontitown City Employees - All employees of the City of Tontitown are required by law to comply with the provisions of the FOIA.

FOIA Departmental Contact Procedures

Based on the subject of the FOIA request, the FOIA Coordinator will send the request to the Departmental Contact. The Departmental Contact shall review the request and work with staff in that Department and in other Departments, as needed, to supply the records requested.

Depending on the items requested the Departmental Contact should provide all of the copies of the requested records as soon as they are reasonably able to the FOIA Coordinator. If there are issues concerning the timely release of public records, the Departmental Contact must notify the FOIA Coordinator immediately to request an extension from the requestor.

If the requestor makes a FOIA request to review records, the department file or documents will be submitted to the FOIA Coordinator. The FOIA Coordinator will review the records and notify the requestor that the records are available for inspection and copying. The FOIA Coordinator will return records to the Departmental Contact after the FOIA request has been completed.

Each Departmental Contact or Tontitown City Employee that receives a FOIA request through the FOIA Coordinator must reply within or before the deadline specified.

If a Department does not have records applicable for the FOIA request, the Departmental Contact/ Tontitown City Employee must reply stating that they do not have the records that are being requested or they do not exist. As a general practice, all replies by email to the FOIA Coordinator should include the original FOIA Request message.

If information from records must be redacted, the Departmental Contact must discuss this with the FOIA Coordinator. Redacting should only be done by the FOIA Coordinator, since there must be an exemption in the Arkansas Freedom of Information Act to support the redaction.

FOIA Log Sheet

The FOIA Office maintains a log of all FOIA requests and responses. This log is updated daily with information on the status of the response for each FOIA request and its final disposition.

ROLE OF CITY EMPLOYEES IN FOIA

Each Tontitown City Employee has a role in adhering to FOIA and the operations of the City of Tontitown. For the purpose of this document, an employee is defined as an individual who is employed on a full-time, part-time, or temporary basis, in any position of Tontitown City government. Requests for public records, whether made verbally or in writing, or by any other means, should always be treated as formal requests. The requestor does not have to use the word "FOIA" when making a request. All requests for public records are FOIA requests and employees should respond immediately by forwarding the request to the FOIA Office. If the information requested is not readily available the FOIA Coordinator has three (3) working days to respond from the time the request is received by the employee. If it can't be, then either the custodian or Coordinator needs to certify that fact in writing and give a specific time and date when the records will be available for inspection/copying or when they will be produced. Although the requestor can make the request for information to any employee, it is suggested the requestor make their request directly to the FOIA Coordinator to expedite their request with the proper information given in a speedy response.

If an employee is asked for public records at any place or at any time, and they are not able to provide them to the FOIA Coordinator, it is the responsibility of the employee to notify their FOIA Departmental Contact or the FOIA Coordinator of the request. The FOIA Coordinator should provide all documents needed in as quick and reasonable as possible manner.

FOIA Departmental Contacts and City employees should forward requests to the FOIA Coordinator for immediate action. It is imperative that the City of Tontitown and the FOIA Coordinator respond to the requests efficiently and timely.

The FOIA Request

The Arkansas Freedom of Information Act requires that public records be made available to citizens for copying and/or inspection. FOIA refers to records that are in existence and does not require that the City of Tontitown create records or answer questions if information is not available. The City of Tontitown may abstract and summarize records, by agreement with the requestor.

A Public Record

Public Record means writings, recorded sounds, films, tapes, electronic or computer based information, or data compilations in any medium, required by law to be kept or otherwise kept, and that constitute a record of the performance or the lack of performance of the official functions that are or should be carried out by a public official or employee, a governmental agency, or another agency or improvement district that is wholly or partially supported by public funds or expending public funds. All records maintained in the public offices or by public employees within the scope of their employment shall be presumable to be public records.

Public records does not mean software acquired by purchase, lease, or license.

All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

FOIA requests may be submitted by mail, email, telephone, in person (walk-in), and by any other means. FOIA requests do not need to include the word "FOIA", but the request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort. The day after the FOIA Coordinator receives the request is considered the first day of the maximum three (3) working day response period.

Mail - If received by mail, the receiver will date stamp the letter. This stamp signifies the official date of receipt. However, depending on the type of request it is the date that the "custodian" received the request that starts the time period

Email - The date that the FOIA Coordinator opens the email is the official date of receipt of the request. Once read the FOIA Coordinator will send a response back to the requestor stating the email requesting the information has been received.

Telephone and Walk-In – A "FOIA Request Form" should be (but not required) completed by the requestor or by the staff person assisting the requestor. The form must include the date, and specific information about the public record that is being requested. A telephone number is very useful, yet, it is not required to be provided. **A "FOIA Request Form" may be substituted by an email that lists all required information as stated above.

A requestor may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

FOIA Request Form

The City of Tontitown has produced a form to assist requestors in receiving the information requested in a speedy and timely manner. This form is not a requirement, but does help the Coordinator locate the appropriate information by having certain information listed on this form, information such as the date, the name and address of the requestor. A telephone number is very useful, yet, it is not required to be provided. Also listed on the form is an area for specific information about the public record that is being requested. It is imperative the requestor be as detailed as possible when requesting information so the FOIA Coordinator is able to gather the appropriate information.

The Duties of the FOIA Coordinator

The FOIA Coordinator is responsible for receiving and responding to requests for public records. The FOIA Coordinator determines which Department(s) will supply the records based on the request. The FOIA Coordinator will communicate with the FOIA Departmental Contacts on the specific request and establish the deadline for a complete response. The FOIA Coordinator will communicate with the requestor if there are questions about the request, or if the FOIA Departmental Contact has concerns. This does not remove the statutory duty of the custodian of the requested records to not reply to the Coordinator in a timely manner.

A requestor may choose to review records in the Office, or to receive copies of the records. It is the responsibility of the FOIA Coordinator to review the documents to be released, and mail, fax, email or have them ready and available for review or pick-up within three (3) working days.

Responses to FOIA Requests

If a request is being denied, or records are not being provided according to the request, the FOIA Coordinator must respond in writing.

SOME POSSIBLE RESPONSES

- ▶ The requested records are being provided and are enclosed.
- ▶ The requested records are being provided in part and withheld in part because the release of part of the record is prohibited by law.
- ▶ It is not practically possible to produce the records within three (3) working days and we will need to ask for an extension.
- ▶ The requested records are being withheld because their release are not deemed to be made open to the public under the provisions of the FOIA.
- ▶ The requested records could not be found or do not exist.

FOIA Departmental Contact Procedures

Based on the subject of the FOIA request, the FOIA Coordinator will send the request to the Departmental Contact. The Departmental Contact should review the request and work with staff in that Department and in other Departments, as needed, to supply the records requested.

The Departmental Contact should provide all of the copies of the requested as soon as possible or the deadline set forth by the FOIA Coordinator to give ample time to respond to the requestor. If there are issues concerning the timely release of public records, the Departmental Contact must notify the FOIA Coordinator immediately to request an extension from the requestor.

If the requestor makes a FOIA request to review records, and the records are not immediately available, the custodian must certify that in writing and provide a date in which they will be available. The custodian will submit the request and department file or documents to the FOIA Coordinator. The FOIA Coordinator will review the records and notify the requestor that the records are available for inspection and copying. The FOIA Coordinator will return records to the Departmental Contact after the FOIA request has been completed.

Each Departmental Contact or Tontitown City Employee that receives a FOIA request from the FOIA Coordinator must reply within the deadline specified.

If a Department does not have any records for the FOIA request, the Departmental Contact/ Tontitown City Employee must reply stating that they do not have the records that are being requested.

As a general practice, all replies by email to the FOIA Coordinator should include the original FOIA Request message.

If information from records must be redacted, the Departmental Contact must discuss this with the FOIA Coordinator. Unless the circumstances require otherwise, all redacting should only be done by the FOIA Coordinator, since there must be an exemption in the Code of Arkansas to support the redaction.

Charges

Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records.

The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

If the estimated fee exceeds twenty-five dollars (\$25.00), the custodian may require the requester to pay that fee in advance.

Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.

The custodian shall provide an itemized breakdown of charges under subdivision (d)(3)(A) of this section.”

FOIA Violations

Departments and individuals who are not responsive, delay, and/or withhold information for release will receive a letter of non-compliance from the FOIA Coordinator which will be sent to the City Mayor for record, review and action. Failure to respond by an employee could be considered as a reason to discipline.

Routine Department Responses

The Police Department, Fire Department, Planning & Community Development Department, and Human Resources Department receive FOIA requests that they respond to routinely. These departments send notifications of the requests and the status of their responses to the FOIA Office. Departments that distribute publications, flyers, and informational and promotional brochures are encouraged to provide these directly to the general public.

FOIA Log Sheet

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FOIA Office Resources

The Tontitown FOIA Office requests advisory opinions, guidelines, training, and educational material from the current city attorney as well as the Arkansas Municipal League as well as other entities when needed.