

<b>CITY OF NEW LONDON</b>		
<b>Open Records &amp; Records Retention Policy</b>		
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<b>Policy Source:</b> Cities and Villages Mutual Insurance Company Wisconsin State Statutes		
<b>Special Instructions:</b> Update as new law or court decisions warrant.		

**I. PURPOSE**

The purpose of this policy is to set forth the City’s policy and procedure regarding Wisconsin Open Records and Retention Law, as established in State Statute. In the event this policy conflicts with state law, state law will apply.

**II. POLICY**

**A. Public Record Access**

It is public policy that all individuals are entitled to as much information as provided by law regarding the affairs of government and the official actions of representatives of government. However, access to records is not unlimited, due to the fact that it may interfere with the City’s operations and protect the privacy rights of individuals.

The City of New London shall allow for the public to obtain information and access to public records, make requests for records or obtain copies of records during the City’s hours of operation. If a record is held at a City location that does not maintain regular hours, access to records will be provided on 48 hours advance notice. The City will charge fees as stated in the notice of Public Records Availability.

A record requester shall be allowed to inspect or receive a copy of a record at the City Clerk’s Office or other location designated in the Notice of Public Record’s availability during established office hours. (All citations listed below refer to Wisconsin Statute numbers.)

1. Record copies: The record requested may be received the following ways:
  - a. Make or receive a copy of a record which appears in written form (§19.35(1)(b)). The requester may be permitted to copy the record or receive a copy substantially as readable as the original. The record custodian has responsibility in determining how a record will be copied.
  - b. May receive a copy of an audio or video recording (§19.35(1)(c)).
  - c. May receive a copy of a transcript, upon request (§19.35(1)(c)).
  - d. May receive a record reduced to written form on paper, if the record is not in “readily comprehensible form” (§19.35(1)(e)).
  - e. The requester may request or take a photograph of a record that does not permit copying (§19.35(1)(f)).
  
2. Fees
 

A fee may not be imposed that exceeds the actual, necessary and direct cost of reproduction and transcription of a record or photographing or photographing processing, unless specifically established or authorized by law (§19.35(3)(a) and §19.35(3)(b)).

  - a. Prepayment of a fee may be required, if the total amount exceeds \$5.00 (§19.35(3)(f)).

- b. A mailing or shipping fee may be imposed for the direct cost of mailing or shipping of any copy or photograph of a record (§19.35(3)(d)).
- c. If the cost of locating a record is \$50 or more, the City may impose a fee that does not exceed the actual, necessary and direct cost of locating the record (§19.35(3)(c)).
- d. Copies of a record may be provided without charge or at a reduced charged, as determined by the City (§19.35(3)(e)).

**B. Record Custodians**

See the Notice of Public Records Availability & Statement of Policy for a list of records, the custodian and when and where records requests may be made..

**C. Record Requests**

Any requester has a right to inspect any public record upon oral or written request that reasonably describes the requested record or information sought, except as otherwise provided by law (§19.35).

- 1. A request is sufficient if it “reasonably describes the requested record” (§19.35(1)(b) & (1)(h)).
  - a. A request is not deemed sufficient if it comes without a reasonable limitation as to subject matter or length of time represented by the record (§19.35(1)(h)).
  - b. A request may be made orally, but must be in writing before action is taken (§19.35(1)(h)).
- 2. A request may not be refused because the requester is unwilling to be identified or to state the purpose of the request, or because the request is received by mail, unless prepayment of a fee is required (§19.35(1)(i)).
  - a. A requester may be required to show acceptable identification whenever the record is kept at a private residence, or for security reasons, federal law or the regulations require it (§19.35(1)(i)).
- 3. Reasonable access restrictions may be applied if the record is irreplaceable or easily damaged (§19.35(1)(k)).
- 4. The City/ is not required to create a new record by extracting information from existing records and compiling the information in a new format (§19.35(1)(L)).

**D. Records Defined**

- 1. A “record” is defined as any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved by an authority, regardless of physical form or characteristics. The following information kept by the City defines a “record” under state law (§19.32(2)).
  - a. Handwritten, typed or printed documentation;
  - b. Maps, charts and blueprints;
  - c. Photographs, film;
  - d. Computer tapes and print-outs;
  - e. Audio and video tapes;
  - f. CD’s, optical disks and microfiche;
  - g. E-mail, floppy disks and computer hard drives;
  - h. Electronically created and stored data per Wisconsin Statute §16.612
  - i. Electronic copies of certain documents, per the federal Electronic Signatures in Global and National Commerce Act (E-SIGN).
- 2. Computer records
  - a. A requester may be required to show personal identification if the requested information is kept in a private home, or for security reasons if required by federal law or regulations (§19.35(1)(i)).

- b. The material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in §19.35(1) or this section (§19.36(4)).
  - c. The City is not required to compile or collect statistics, or create a new record by extracting information from existing records and compiling the information in a new format (§19.35(1)(L)).
  - d. E-mail records are subject to the same public records retention law as hard copies of records are.
  - e. Some e-mail records may not be considered public record, due to the fact that they are draft documents or are created or maintained for personal use only and are not related to the City's business
  - f. Any public records statute or rule is applicable to electronic records as well. Accordingly, for exclusively stored records in an electronic format, authorities must do the following (Adm. Code 12.05):
    - 1. Maintain electronic public records that are accessible, accurate, authentic, reliable, legible and readable throughout the record life cycle.
    - 2. Create policies, assign responsibilities and develop appropriate formal mechanisms for creating and maintaining electronic records through the record life cycle.
    - 3. Maintain confidentiality or restricted access to records or records series maintained in electronic format, limiting access to those persons authorized by law, administrative rule or established policy.
    - 4. Utilize information systems that accurately reproduce the records they create and maintain.
    - 5. Describe and document public records created by information systems.
    - 6. Document authorization for the creation and modification of electronic records and, where required, ensure that only authorized persons create or modify the records.
    - 7. Design and maintain new information systems so that these systems can provide an official record copy for those business functions accomplished by the system.
    - 8. Develop and maintain information systems that maintain accurate linkages, electronically or by other means, to transactions supporting the records created where these linkages are essential to the meaning of the record.
    - 9. Utilize information systems that produce records that continue to reflect their meaning throughout the record life cycle.
    - 10. Utilize information systems that can delete or purge electronic records in accordance with the approved retention schedule.
    - 11. Use information systems that can export records that require retention to other systems without loss of meaning.
    - 12. Utilize information systems that can output record content, structure and context.
    - 13. Utilize information systems that allow records to be masked to exclude confidential or exempt information.
  - g. Applicability. This rule first applies to public records stored exclusively in electronic format and to information systems acquired or substantially modified after the effective date of the rule (5/1/2001) (Adm. 12.06).
3. Authentications and Electronic Transactions
- a. Legal Recognition. An electronic record, contract or signature has the same legal effect and enforceability as written records (§137.15).
  - b. Submission of written documents. Unless otherwise prohibited by law, and with the City's consent, any record that can be received by the City can be submitted in electronic format, including signatures (§137.25(1)).

- c. Notarization and acknowledgement. A document can be notarized by electronic signature (§137.19).
- d. Application. The following records are not applicable: records governed by any law relating to adoption, divorce or other matters of family law, notices provided by a court, court orders, official court documents, including briefs, pleadings, and other writings, required to be executed in connection with court proceedings (§137.12(2m)). Also not applicable are: the cancellation or termination of utility services; default, acceleration, repossession, foreclosure or eviction, or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual; the cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities; recall of a product, or material failure of a product that risks endangering health or safety; or a law requiring a document to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials (§137.12(2r)).
- e. Provision of information in writing; presentation of records. If parties have agreed to conduct a transaction by electronic means, the recipient must be capable of retention of the record, and the recipient's ability to store and print the record must be ensured by the sender (§137.16(1)).
- f. Retention of original electronic records. Electronic records may be stored if the record's final form reflects the original information, and if it remains accessible (§137.20(1)(a)(b)). An electronic record retained in this manner satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless otherwise prohibited by law (§137.20(6)(a)).
- g. Time and place of sending and receipt. An electronic record is sent when it is addressed properly and the recipient is able to retrieve it and is in a form capable of being processed by that system, and when the record enters the information processing system (§137.23(1)). The record is received when it enters the recipient's designated information processing system, and the record is in a form capable of being processed by that system, and the recipient is able to retrieve the record (§137.23(2)). An electronic record is received even if no individual is aware if its receipt (§137.23(5)).
- h. Interoperability. If a City adopts standards regarding its receipt of electronic records or signatures, the City shall promote consistency and interoperability with similar standards adopted by other governmental units of Wisconsin, other states, the federal government, as well as nongovernmental persons interacting with governmental units of Wisconsin (§137.26).
- i. An electronic record or signature is attributable to a person if it was created by the act of the person, which may be shown in any manner, including a showing of the efficacy of any security procedure applied and is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement (§137.17).
- j. Effect of change or error.
  1. If the parties have agreed to use of a security procedure to detect changes and errors, the "conforming" party may avoid the effect of the changed or erroneous record, if the other party has not conformed and they would have detected the error had they conformed (§137.18(1)(a)).
  2. In automated transactions, an individual may avoid the effects of an electronic record that resulted in error made by the individual in dealing with the electronic agent of another person if they did not provide an opportunity for the prevention or correction of the error and the individual (at the time of the error).
    - a. Notifies the other person of the error.
    - b. Takes steps to return to the other person, if instructed, or to destroy the consideration received as a result of the erroneous electronic records.
    - c. Has not used or received any benefit or value from the consideration, if any, received from the other person (§137.18(1)(b)).

3. If 1 or 2 above do not apply, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any (§137.18).

#### **E. Public Record Exclusions**

1. Per §19.32(2) (except as noted), a "record" does not include the following:
  - a. Drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared in the name of a person the originator is working for (including notes prepared with the purpose of recalling one's memory);
  - b. Materials which are purely the personal property of the custodian and have no relation to their office;
  - c. Materials to which access is limited by copyright, patent or bequest;
  - d. Published materials in the possession of an authority other than a public library which are available for sale, or available for inspection at a public library;
  - e. Preliminary versions of documents prepared by a public employee for their or another's signature, as noted by the Attorney General.  
[Note: A preliminary form of a document shared by the creator with others is not always a "draft", even though it may be labeled as one. If the document is shared with other departments and implements practices and procedures, it is no longer a "draft" and is subject to the requirements of the Public Records Law. When a "draft" is accepted with the intention to circulate it for review and comment, it is also considered a public record.]
2. Statutory Exceptions Listed in the Public Records Law
  - a. Application of other laws. Any record which is authorized to be or specifically exempted from disclosure by state or federal law, except the portion of the record containing public information (§19.36(1)).
  - b. Law enforcement records. Any record relating to investigative information obtained for law enforcement records required by federal law or regulations or as a condition to receipt of state aid (§19.36(2)).
  - c. Contractors records. Any record produced or collected under a contract shall be made available for inspection and copying under §19.35(1) (§19.36(3)).
  - d. Computer programs and data. A computer program... "is not subject to examination or copying under §19.35(1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in §19.35 or this section." (§19.36(4)).
  - e. Trade secrets. Access may be withheld to any record or portion of a record that contains information that qualifies as a "trade secret" (§19.36(5)).
  - f. Separation of information. If a record contains information that is and is not subject to disclosure, the City shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure, prior to release of the record (§19.36(6)).
  - g. Identities of applicants for public positions. The final 5 candidates for a public office or position considered to be the most qualified or whose name is considered for appointment shall be identified unless the candidate indicates in writing to the City that they do not want their identity to be revealed. This exception is not available once an applicant is certified for appointment and is a final candidate (§19.36(7)).
  - h. Identities of law enforcement informants. Information from a record that contains personally identifiable information (i.e. name, address, telephone number, voice recording or handwriting sample) on an informant, who has been given a promise of confidentiality in exchange for information concerning an investigation being conducted by a law enforcement agency, may be deleted. If the record cannot be inspected or copied without identifying the informant, then the entire record shall not be disclosed, unless a determination is made that

- the public interest in allowing a person to inspect, copy or receive a copy of the information outweighs the harm done to the public interest by providing access (§19.36(8)).
- i. Records of plans or specifications for state buildings. Any record containing plans or specifications or proposed plans or specifications for any state owned or leased building is not subject to the right of inspection or copying under §19.35 (§19.36(9)).
  - j. Employee personnel records. Access to the following information will not be provided, except to an employee, an employee’s representative or to a recognized or certified collective bargaining representative.
    1. The home address, home electronic mail address, home telephone number or social security number of an employee, unless access is authorized by the employee.
    2. Information relating to the current investigation of a possible criminal offense or misconduct connected with the employee’s employment, prior to disposition of the investigation.
    3. Information pertaining to an employee’s test score.
    4. Employee information utilized for staff management planning, including performance evaluations, judgments or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference or other comments or ratings relating to employees (§19.36(10)).
  - k. Records of an individual holding a local public office or a state public office. Access to the following information will not be provided, except the home address of an individual who holds an elective public office or an individual who, as a condition of employment, is required to reside in a specified location.
    1. The home address, home electronic mail address, home telephone number or social security number (§19.36(11)).
  - l. Information relating to certain employees. Providing personally identifiable information regarding prevailing wage employees (not including: work classification, hours of work, or wages and benefits) employed by a contractor working with the City is prohibited, unless the disclosure is specifically authorized by the employee (§19.36(12)).
3. Personally Identifiable Information: Any person or their representative has the right to review any record maintained by the City that contains personally identifiable information. The following records are exempt from disclosure, except for the portion of the record which contains public information.
    - a. A record that contains personally identifiable information collected and maintained in connection with a complaint, investigation or other circumstance that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding (§19.35(1)(a)(1)).
    - b. A record that contains personally identifiable information that would endanger an individual’s life or safety, identify a confidential informant, endanger the security or compromise the rehabilitation of any person in any state prison, correctional facility, child care institution, group home, mental health institute, center for the developmentally disabled or institutional facility for the care of sexually violent persons (§19.35(1)(a)(2)).
    - c. A record that is part of a series that is not indexed, arranged or automated in a way that the record can be retrieved maintaining the series by use of an individual’s name, address or other identifier (§19.35(1)(a)(3)).
  4. The USA Patriot Act (Public Law No. 107-56, 115 Stat. 272): This law provides that any public official or employee served with a search warrant under the Act “shall [not] disclose to any other person...that the Federal Bureau of Investigation has sought or obtained tangible things under this section.” 50 U.S.C. §1861(d). Further, the Act provides that “information obtained by a State or local government from a federal agency under this section shall remain under the control of the

Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply..." 6 U.S.C. §482.<sup>1</sup>

## F. Procedure for granting or denial of an open records request

### 1. Granting a Request

If a request is made to inspect or copy a record containing personally identifiable information pertaining to an individual maintained by the City, the City shall determine if the requester has a right to inspect or copy the requested record. A request will always fall into one of the following categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access as determined by the balancing test<sup>2</sup>. If a determination is made that the requester has a right to inspect or copy a record, the request shall be granted. The City shall fill or respond to an open records request "as soon as practicable and without delay". Normally this shall be within ten days, unless the request requires extensive search time, or mandates a review by a Court or Attorney prior to release. If such is the case the requestor shall be notified within ten days of the situation and advised on when the request will likely be filled.

### 2. Denying a Request

a. The City Record custodian may consider the following bases for denial of a requested record: (1) statutory exemptions; (2) common law principles; (3) exemptions under the Open Meetings Law, if the required demonstration is met; or (4) prevailing public interest in keeping the record confidential (the "balancing test"). *If the City/Village determines that the requester does not have a right to inspect or copy a record, a determination shall be made whether the requester has a right under §19.35(1)(am), and appropriately grant or deny the request (§19.35(4)(c)(3)).*

b. If the City determines that a request will be denied (in whole or part), the requester will be notified of the denial, and the reasons for the denial as soon as practicable. *[The reason(s) for the denial should be stated specifically. If confidentiality is not guaranteed by statute, a statement of the specific public policy reason for the denial should be included in the custodian's denial letter.]*

1. An oral request may be denied unless a written statement of the reason(s) for the denial is made by the requester within 5 business days (§19.35(4)(b)).

2. If a written request is denied by the City/ (in whole or part), the requester shall receive a written statement of the reason(s) for the denial and shall be informed that the determination is subject to review by mandamus, or upon application to the attorney general or a district attorney (§19.35(4)(b)).

3. The reason for the denial of a record must be given in the initial response or the court will order the documents to be disclosed. The record(s) will be disclosed if the City/ gives no reasons or insufficient reasons for the denial.<sup>3</sup>

### 3. The Balancing Test

The custodian shall determine if there is a statutory exception or recognized legal limitation to access of a records request. Where a potential limitation may exist, the custodian shall "balance" the request by weighing the competing interests involved. A request may only be denied when the public's right to inspect the information is outweighed by the public interest in not disclosing the information. *[Note: When conducting the "balancing test", which is done on a case-by-case basis, the custodian must focus on whether the harm to the public's interest in non-disclosure outweighs the public's interest in inspection of the record.]*

<sup>1</sup> Wisconsin Public Records Law, Compliance Outline, Wisconsin Department of Justice, 2004

<sup>2</sup> Hathaway v. Joint School District No. 1, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984).

<sup>3</sup> Beckon, 36 Wis. 2d at 518.

3. Processing a Request
  - a. Any open records request shall be reviewed to determine precisely what is being requested. If the request is unclear, the request may be denied or clarified by the Record custodian.
  - b. If the Record custodian determines that the request will take considerable time and effort to fulfill, the anticipated costs may be estimated and the requester will be informed of those costs. A pre-payment will be required if the cost will be more than \$5.
  - c. City employees. If the record request pertains to any City/ employee, the Record custodian will review the record(s) and delete the appropriate information prohibited from disclosure under §19.36(10), which includes: (1) home address and other personal identifying information about the employee; (2) references to ongoing investigations; (3) employee exam information, except the final score (unless otherwise prohibited); and (4) information used for staff planning, including performance evaluations, judgments, and recommendations containing subjective notes by supervisors or department heads regarding pay, assignment, promotions, or any other comments or ratings relating to the employee. In this case, a “Woznicki notice” is not required.
  - d. Non-employees. Records obtained by the City as a result of a search warrant or subpoena or any individual indicated in a closed personnel investigation is the only provision applicable to non-employees. The “balancing test” must be applied to a request for other information that indicates non-employees.
  - e. Elected, local or state public official. For records concerning elected, local or state public officials, the record custodian shall review the records and delete information prohibited from disclosure under §19.36(11), which includes the information indicated above, prohibited from disclosure under §19.36(10), with the exception of the official’s home address, who is required to live in a specific location.
  - f. For any exemption cited, the City will provide an explanation to the requester regarding the deletion or exemption, and reference the specific statutory exceptions.
  
4. Employee Record Requests.
  - a. An employee has a right to examine the contents of their personnel file at least two times per year, unless otherwise provided in a collective bargaining agreement. The inspection request must be granted by the City within 7 working days, and must take place at a location near the employee’s worksite, during normal working hours (§103.13(1)).
  - b. If the employee is involved in a grievance, a representative designated by the employee may view documents that may influence the grievance (§103.13(3)).
  - c. The employee or their representative have a right to copy or receive a copy of the records, and a reasonable fee for the copies may be charged by the City.
  - d. Information in a record that the employee disagrees with may be corrected, if the City agrees with the correction. If a correction is not permitted, the employee may submit a written statement for attachment to the disputed information in the record (§103.13(4)).
  - e. An employee may not view the following record information:
    1. Records relating to the investigation of possible criminal offenses (§103.13(6)(a));
    2. Letters of reference (§103.13(6)(b));
    3. Exams, except for cumulative exam scores for either a section of or the entire exam (§103.13(6)(c));
    4. Staff management planning documents, including recommendations about salary, bonuses, promotions, job assignments, or other comments or ratings used for planning purposes of the City (§103.13(6)(d)).
    5. Information about another person, if that person’s privacy would be invaded with release of the information (§103.13(6)(e)).

- 6. An employer who does not maintain any personnel records (§103.13(6)(f));
- 7. Records concerning any pending claim between the City and the employee that may be discovered in the context of a judicial proceeding (103.13(6)(g)).
- f. An employee's medical records may be disclosed to their physician, if the City believe the records could have an adverse effect on the employee (§103.13(5)).

**G. Record Subject Notification or “Woznicki Notice”<sup>4</sup>**

- 1. Notice to the subject of the record.

The City is *not* required to notify the record subject prior to providing record access to a requester, and the record subject is not entitled to judicial review of the City's decision to provide access, except as provided below (§19.356(1)):

- a. For investigations into disciplinary matters involving an employee or a possible employment related violation (§19.356(2)(a)(1)).
- b. For records obtained by the City through a subpoena or search warrant (§19.356(2)(a)(2)).
- c. A record prepared by an employer other than the City, if the record contains information relating to an employee of that employer (unless authorized by the employee) (§19.356(2)(a)(3)).

- 2. Record subjects that hold a local public office.

If the record subject is an officer or employee of the City holding a local public office, the City shall, before permitting access and within 3 days after deciding to permit access, serve written notice, personally or by certified mail to the record subject. The written notice shall briefly describe the requested record and the rights of the record subject.

- a. Within 5 days, the record subject may augment the record with written comments and documentation selected by them and the augmented record shall then be released (§19.356(9)(a) and (b)).

- 3. Other record subjects.

The City shall serve written notice, personally or by certified mail, of their decision to permit access to a record to the subject of the record within 3 days after making the decision to permit access. The written notice shall briefly describe the requested record and the rights of the record subject (§19.356(2)(a)).

- a. Notice is not applicable in the following situations:

- 1. The City/ may provide an employee, an employee's representative (to the extent required under §103.13), or a recognized or certified collective bargaining representative access to a record pertaining to the employee (§19.356(2)(b)).
- 2. Records produced for equal rights, discrimination or fair employment law compliance purposes pursuant to subchapter II of chapter III, if provided by the City having responsibility for those functions (§19.356(2)(c)).

- b. A record subject may provide the City written notification of their intent to seek a court order restraining the City from providing access to the requested record within 5 days after receipt of the City's notice to permit access to the record (§19.356(3)).

- c. A record subject may take action to seek a court order restraining the City from providing access to the requested record within 10 days after receipt of the City's notice to permit access to the record. The record subject shall name the City as the defendant (§19.356(4)).

- d. The requester may intervene in the court action. If the requester does not intervene, they will be notified of the results of the court proceedings (§19.356(4)).

- e. If a written objection is not filed, the City must wait 12 days (not including Saturday, Sunday, legal holidays, or the first day) before providing record access to the requester (§19.356(5)).

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<sup>4</sup> 202 Wis. 2d 178, 549 N.W. 2d 699 (1996)

- f. If an objection is filed, the City must wait to release the record until a ruling is made and/or until the period for appealing or petitioning for review expires, until a petition for review is denied, or until the City receives written notice from the record subject that an appeal or petition for review will not be filed (§19.356(5)).
- g. The court may restrain the City from providing access to the requested record (§19.356(6)), and shall issue a decision within 10 days after filing of the complaint and proof of service of the complaint upon the City. A decision will be issued no later than within 30 days upon completion of the filings (§19.356(7)).

#### **H. Mandamus**

For records (whole or part) withheld, or delayed access after a written request for disclosure is made, a requester or the district attorney (on their behalf) may subject the City to mandamus action, asking a court to order release of the record (§19.37(1)(a) and (b)).

#### **I. Challenging the accuracy of records**

1. The accuracy of a record containing an individual's personally identifiable information may be challenged by the individual or a person authorized by the individual if the individual is authorized to inspect the record and they notify the authority in writing of the challenge.
2. The City shall either concur with the challenge and correct the information or deny the challenge and notify the individual of the denial. The individual will then be allowed to file a brief statement that explains the reasons for the disagreement with the disputed portion of the record.
3. The following records are not subject to challenge: any record transferred to an archival depository or any record pertaining to an individual if a state statute or federal law governs challenges to the accuracy of the record.

#### **J. Record Destruction**

1. A record may not be destroyed at any time after the receipt of a request for copy or inspection until the request is granted or at least 60 days after the date the request was denied or 90 days after the date the request was denied (if the requester is a committed or incarcerated person).
2. A record requested under §19.37 may not be destroyed until after a court order is issued and the deadline for appealing that order has passed, or, if appealed, until after the court order hearing the appeal is issued.
  - a. If the court order the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.

### **III. DEFINITIONS**

- A. Authority:** Any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council department or public body corporate and politic created by constitution, law, ordinance, rule or order.
- B. Electronic:** Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- C. Electronic Format:** Includes information created, generated, sent, communicated or stored in electrical, digital, magnetic, optical, electromagnetic or similar technological form.
- D. Electronic Signature:** An electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- E. Employee:** Any individual who is employed by an authority, other than an individual holding local public office or a state public office, or any individual who is employed by an employer other than an authority.
- F. Information System:** A system for generating, sending, receiving, storing or otherwise processing data.

- G. Legal Custodian:** An elected official is the legal custodian of their and the office records. A chairperson of a committee of elected officials are the legal custodians of committee records. A City must designate a custodian in one or more positions occupied by an officer or an employee of the agency. Absent the designation, the City's highest ranking officer and chief administrator is the custodian.
- H. Local Public Office:** (1) An elective office of a local governmental unit; (2) a county administrator or administrative coordinator or a city or village manager; (3) an appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor; (4) an appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor; (5) any appointive office or position of a local governmental unit in which an individual serves as the head of a department, agency or division of the local governmental unit, but does not include any office or position filled by a municipal employee. Included, as noted in the amendment, are the offices of the police chief and fire chief, and individuals who do not serve for a statutorily specified term, who may be removed for cause only, and who are not appointed by the governing body. The intent of this note is to make clear that those holding upper level government offices or who have broad discretionary authority may not seek judicial review in order to prevent the release of records that name them.
- I. Person authorized by the individual:** (1) The parent, guardian or legal custodian of a child; (2) the guardian of an individual adjudged incompetent; (3) the personal representative or spouse of an individual who is deceased; or (4) any person authorized, in writing, by the individual to exercise the rights granted under this section.
- J. Personally Identifiable Information:** Information that can be associated with a particular individual through one or more identifiers or other information or circumstances.
- K. Record Subject:** An individual about whom personally identifiable information is contained in a record.
- L. Requester:** Any person who requests inspection or copies of a records, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or their minor children for whom they have been denied physical placement, and the record is otherwise accessible to the person by law.