

Monroe Township Water and Sewer District Public Records Policy

Adopted by Monroe Township Water and Sewer District Board of Trustees on _____, 2014 in Resolution No. _____

Introduction

It is the policy of Monroe Township Water and Sewer District (Miami County, Ohio) that openness leads to a better informed citizenry, which leads to a more transparent government and better public policy. It is the general policy of Monroe Township Water and Sewer District (hereafter, the "District") to:

1. Strictly adhere to Ohio's Public Records Act and other state of Ohio and federal laws; and
2. Permit prompt inspection of public records (Ohio Revised Code ("R.C.") 149.43(B)(1)); and
3. Provide copies of public records within a reasonable period of time (R.C. 149.43(B)(2))

The Public Records Act evolved from the principle that Ohio's citizens are entitled to access the records of their government. We agree that to advance that principle, the Public Records Act should be interpreted liberally in favor of disclosure.

Section 1. Public Records

1.0.1. Under Ohio law, a public office may cause to be made only such records that are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affect by the agency's activities. (R.C. 149.40).

1.0.2. In accordance with the Ohio Revised Code and court rulings, "records" are defined as those items that meet all of the following:

- a. any document, device, or item, regardless of physical form or characteristic, including an electronic record which includes but is not limited to e-mail, text messaging, or other record created, generated, sent, communicated, received, or stored by electronic means (such as a "smart phone");
- b. that is created or received by, or coming under the jurisdiction of a public office; and
- c. that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (R.C. § 149.011(G)).

- 1.0.3. The determination of whether a specific item constitutes a “record” will depend on the facts and circumstances surrounding the particular item requested. The Ohio Supreme Court has imposed an actual use standard in defining a “record,” which means that an item is not automatically a “record” simply because the public office could (but did not) use a document it received to carry out its duties and responsibilities. All “records”, as that term is defined under Ohio law, of the District are public unless they are specifically exempt from disclosure under the Ohio Revised Code.
- 1.0.4. Furthermore, the District is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.

Section 1.1

- 1.1.1. It is the policy of the District that, as required by Ohio law, public records will be organized and maintained in a manner that they can be made available for inspection to any person or for copying at all reasonable times during regular business hours in accordance with R.C. 149.43.
- 1.1.2. Upon request, copies of requested public records will be made available at cost and within a reasonable period of time (R.C. 149.43(B)(1)).
- 1.1.3. The District will also have available a copy of its current records retention schedule at a location readily available to the public (R.C. 149.43(B)(2)).

Section 1.2

- 1.2.1. Not all of the District’s records are “public records”. Certain records are exempt from the Public Records Act. Exempt records include records:
- a. the release of which are *prohibited* by state or federal law, including, but not limited to:
 - i. Attorney-client privileged information;
 - ii. Records of a Certified Public Accountant or public accountant in the performance of an audit of a public office (R.C. 4701.19(B));
 - iii. Federal tax returns (26 U.S.C. 6103(a)); and
 - iv. Criminal background information and other law enforcement information on the LEADS/CCH/NCIC computer database (42 U.S.C. 3789g);
 - b. that are subject to an express exception set forth in Ohio’s Public Records Act or under Ohio case law, which may be released only if the District decides to waive the express exception.

1.2.2. The exemptions to the Public Records Act will be narrowly construed by the District in the favor of disclosure. The District may seek a legal review prior to determining whether or not an exception applies.

Section 2. Record requests

Each request for public records should be evaluated for a response using the following guidelines:

Section 2.1

2.1.1. Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the District to identify, retrieve, and review the records. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for public records such that the District cannot reasonably identify what public records are being requested, then the District may deny the request. In such case, the District will provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the office and accessed in the ordinary course of the District's duties. (R.C. 149.43(B)(2)).

Section 2.2

2.2.1. The requester does not have to put a records request in writing, and does not have to provide his/her identity or the intended use of the requested public record. However, the District may ask for a written request and may ask for the requestor's identity and/or intended use of the information requested if (1) it would benefit the requestor by enhancing the ability of the District to identify, locate or deliver the public records being sought, and (2) the requestor is informed that a written request and revealing the requestor's identity and intended use of the information requested are not required. (R.C. 149.43(B)(5)).

2.2.2. The District will permit a requester to choose to have the public record duplicated upon paper, upon the same medium which the District keeps it, or upon any other medium which the District determines that it reasonably can be duplicated as an integral part of the normal operations of the District. The District is not required to allow the requester to make the copies of the public record. (R.C. 149.43(B)(6)).

Section 2.3

2.3.1. Public records are to be available for inspection during regular business hours, with the exception of published holidays.

- 2.3.2. Public records must be made available for inspection promptly. (R.C. 149.43(B)(1). To the extent that the District may operate 24-hours-a-day, the records of the District will be made available for inspection during normal administrative hours.
- 2.3.3. In processing a request for inspection of a public record, a District employee must accompany the requester during inspection to maintain the integrity of original records.
- 2.3.4. Copies of public records must be made available within a reasonable period of time. (R.C. 149.43(B)(1))
- 2.3.5. “Prompt” and “reasonable” take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

Section 2.4

- 2.4.1. Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes (both in draft and final form), resolutions, budgets, etc.
- 2.4.2. Except as otherwise provided in the Ohio Public Records Act, the District may not limit the number of public records that the District will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours. (R.C. 149.43(E)(1))

Section 2.5

- 2.5.1. Any denial, in whole or in part, of public records requested must include an explanation, including legal authority setting forth why the request was denied. If the request was in writing, the explanation shall also be provided to the requester in writing. (R.C. 149.43(B)(3)).
- 2.5.2. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the District will make available all of the information within the public record that is not exempt. When making the public record available for public inspection or copying the public record, the District will notify the requester of any redaction or make the redaction plainly visible. (R.C. 149.43(B)(1)). If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

Section 3. Costs for Public Records

- 3.0.1. Those seeking public records will be charged only the actual cost of making copies.
- 3.0.2. The District may require a requester to pay in advance the cost involved in providing the copy of the public record, as requested. (R.C. 149.43(B)(6)).
- 3.0.3. The charge for paper copies is 5 cents per one-sided, letter-sized or legal-sized page.
- 3.0.4. Those seeking public records should be charged only the actual cost of making copies, unless the cost is otherwise set by statute. (R.C. 149.43(B)(1)). Employee time should not be calculated into the charge for copying a public record. However, in the event that circumstances make it reasonable for the District to hire an outside contractor to make copies of requested records, the requester will be charged the actual cost paid to the outside contractor for the copying service. (R.C. 149.43(F)(2)(a)).
- 3.0.5. The District has no duty to provide copies of public records free of charge to someone who indicates an inability or unwillingness to pay for them.

Section 3.1

- 3.1.1. Upon request, the District will provide copies of public records to a requester by United States mail or by any other means of delivery or transmission that the District deems reasonable. The District may require such a requester to pay in advance the cost of postage or costs incurred for other supplies used in the mailing, delivery, or transmission, but not the time used for gathering, reviewing or physically copying the records (R.C. 149.43(B)(7)).
- 3.1.2. There may be instances when the District be able to provide copies made in-house without disrupting its normal functions, but only over an extended period of time. In that instance, the District may offer the requester the options of (1) having the documents produced through a faster method by employing temporary personnel and equipment, (2) using an external private contractor, or (3) having the documents produced in-house by this public office's normal staff and equipment in a less efficient and more time-consuming manner.


Section 4. Failure to respond to a public records request

- 4.0.1. The District recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the District's failure to comply with a request may result in the requester commencing an action against the District and possibly a court may order the District to comply with the Public Records Act, as well as order the District to pay statutory damages of one hundred dollars for each business day (beginning with

the day the requester files the mandamus action) during which this public office failed to comply (up to a maximum of one thousand dollars), as well as court costs and the requester's reasonable attorney fees.

Section 5. Distribution

- 5.0.1. The District will distribute this public records policy to the employee(s) of the District who is/are the records custodian or records manager or who otherwise has custody of the records of the District and shall require such employee(s) to acknowledge receipt of the copy of this public records policy.
 - 5.0.2. The District will create a poster that describes this public records policy and shall post the poster in a conspicuous place in the District office.
 - 5.0.3. The District will include this public records policy in the district's *Board Member and Employee Policies* handbook.
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