

# PROCEDURE POLICY

## FOR ACCESS TO PUBLIC RECORDS FOR THE CITY OF EAST PROVIDENCE

The following Procedures for Access to Public Records are promulgated pursuant to R.I.G.L. §38-2-1 et. seq., as amended, (hereinafter the "Procedure").

**Definitions:** As used in this Procedure:

**"Agency"** means any executive, legislative, judicial, regulatory, or administrative body of the State of Rhode Island, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, and school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in §42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.

**"City Manager"** means the highest authority of the City of East Providence.

**"Public Record"** or **"Public Records"** shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

1. Requests for public records shall be made to the appropriate department head. If it is unknown as to which department is the custodian of the public records requested, inquiries shall be made in the City Clerk's Office and that office shall assist in locating the records requested.

2. All records maintained or kept on file by the City of East Providence, whether or not such records are required by any law or by any rule or regulation shall be public records, and every person shall have the right to inspect and/or copy such records at such reasonable time as may be determined by the custodian thereof. As provided in R.I.G.L. §38-2-2, Subsection 4(i), the following records shall not be deemed public:

**A-I. (a)** All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files.

(b) Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552 et. seq.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state municipality, or public works contractor or subcontractor on public works projects, employment contract, work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buyout provision.

**A-II.** Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of any public retirement systems as well as all persons who become members of that retirement systems after [June 17, 1991] shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.

**B.** Trade secrets and commercial or financial information obtained from a person, firm, or corporation, which is of a privileged or confidential nature.

**C.** Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the Family Court.

- D.** All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency but only to the extent that the disclosure of such records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and Procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual; provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.
- E.** Any records which would not be available by law or rule of court to an opposing party in litigation.
- F.** Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.
- G.** Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.
- H.** Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.
- I.** Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.
- J.** Any minutes of a meeting of a public body which are not required to be disclosed pursuant to Chapter 46 of Title 42.

- K.** Preliminary drafts, notes, impressions, memoranda, working papers, and work products.
- L.** Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- M.** Correspondence of or to elected officials with or relating to those they represent, and correspondence of or to elected officials in their official capacities.
- N.** The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected to by provision.
- O.** All tax returns.
- P.** All investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.
- Q.** Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- R.** Requests for advisory opinions until such time as the public body issues its opinion.
- S.** Records, reports, opinions, information, and statements required to be kept confidential by federal or state law, rule, rule of court, regulation, or by state statute.
- T.** Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of Chapter 16 of Title 8 are exempt from the operation of this chapter.
- U.** Library records which by themselves or when examined with other public

records would reveal the identity of the library user requesting, checking out, or using any library materials.

- V. Printouts from telecommunication devices for the deaf or hearing and speech impaired.
- W. All records received by the Insurance Division of the Department of Business Regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the Insurance Department of this or any other state or country, at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.
- X. Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.
- Y. Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island General Laws § 9-1.1-6.

However, any reasonably segregable portion as determined by the chief administrative officer of the public body of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

3. The City of East Providence must allow copies to be made or provide copies of public records. The cost per copied page of written public documents shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper. A reasonable charge may be made for search or retrieval of documents. Hourly costs for search and retrieval shall not exceed fifteen (\$15.00) dollars per hour and no costs shall be charged for the first hour of search or retrieval of documents. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request. Copies of documents shall be provided and search and retrieval of documents accomplished within a reasonable time after a request. The City of East Providence, upon request, shall provide an estimate of the costs of a request for documents prior to providing copies. Upon the request, the City of East Providence shall provide a detailed itemization of the costs charged for search and retrieval. A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the

commercial interest of the requester. The following are copying fees for specific documents:

Real Estate Records as provided in R.I.G.L. §34-13-9.	
Vital Records as provided in R.I.G.L. §23-3-25	
Zoning Ordinance	\$15.00

4. The right of a person or entity to inspect and copy records, the duty of the City of East Providence to maintain minutes of meetings, and the Procedures for access to said public records, as set forth in R.I.G.L. §38-2-3.

- A. Except as provided in §38-2-2, Subsection 4(I), all records maintained or kept on file by the City of East Providence, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.
- B. Any reasonably segregable portion of a public record excluded by subdivision 38-2-2, Subsection 4, shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.
- C. The City of East Providence shall make, keep, and maintain written or recorded minutes of all meetings.
- D. The City of East Providence has established written Procedures regarding access to public records but the City shall not require written requests for public information available pursuant to R.I.G.L. §42-35-2 or for other documents prepared for or readily available to the public. These Procedures include, but not limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these Procedures shall be posted on the City of East Providence's website, and be made otherwise readily available to the public. The unavailability of a designated City of East Providence public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records pursuant to the following subsection 4E. A written request for public records need not be made on a form established by the City of East Providence if the request is otherwise readily identifiable as a request for public records.
- E. The appropriate department head of the City of East Providence also known as the custodian of the public records shall permit the inspection or copying

of the requested public records within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days after receiving the public records request, the City of East Providence shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases, the East Providence may have up to an additional twenty (20) business days to comply with the public records request if it can demonstrate that the voluminous nature of the public records request, the number of public records requests for records pending, or the difficulty in searching for and retrieving or copying the requested public records, is such that additional time is necessary to avoid imposing an undue burden on the City of East Providence.

- F.** If the public record is in active use or in storage and, therefore, not available at the time a person or entity requests access, the custodian shall so inform the person or entity and make an appointment for the person or entity to examine such records as expeditiously as they may be made available.
- G.** Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the City of East Providence is capable of providing them. The City of East Providence shall provide any data properly identified in a printout or other reasonable format, as requested.
- H.** The City of East Providence shall not be required to reorganize, consolidate, or compile data not maintained by the City in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the City of East Providence would not be unduly burdened in providing such data.
- I.** Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.
- J.** No public records shall be withheld based on the purpose for which the records are sought, nor shall the City of East Providence require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.
- K.** At the election of the person or entity requesting the public records, the City of East Providence shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requesting person or entity's choice, unless complying with that preference would unduly be burdensome due to the volume of records requested or the costs that would be incurred.

The person or entity requesting delivery shall be responsible for the actual cost of delivery, if any.

- L. Notwithstanding the provisions of subsection 38-2-3(e), the following information reflecting an initial arrest of an adult and charge or charges shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours, to the extent such information is known by the City of East Providence:

1. Full name of the arrested adult;
2. Home address of the arrested adult, unless doing so would identify a crime victim;
3. Year of birth of the arrested adult;
4. Charge or charges;
5. Date of the arrest;
6. Gender of the arrested adult;
7. Race of the arrested adult; and
8. Name of the arresting officer unless doing so would identify an undercover officer;

The provisions of this section of Procedure shall apply to arrests made within five (5) days prior to the request.

5. No person or business entity shall use information obtained from public records pursuant to this Procedure to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this Procedure shall, in addition to any civil liability, be punished by a fine of not more than Five Hundred and 00/100 (\$500.00) Dollars, and/or imprisonment for no longer than one (1) year as provided for in R.I.G.L. §38-2-6.

6. The City of East Providence has the right to deny a request for access to public records. Any denial of the right to inspect or copy records provided for under this Procedure shall be made to the person or entity requesting the right by the City of East Providence in writing giving the specific reasons for the denial within ten (10) business days of the request, and indicating the Procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the City of East Providence. Failure to comply with a request to so inspect or copy the public records within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended in accordance with the provisions of subsection §38-2-3(e) of this Procedure. All copying and search and retrieval fees shall be waived if the City of East Providence fails to produce requested records in a timely manner; provided, however, that the production of records shall not be deemed untimely if the City of East Providence is awaiting receipt of payment for the costs properly charged under §38-2-4. The City of East



Providence, shall, when it receives a request to inspect or copy records that do not exist or are not within its custody or control shall, in responding to the request in accordance with this Procedure, state that it does not have or maintain the requested records.

7. Under R.I.G.L. §38-2-7 any denial of the right to inspect or copy records, in whole or in part provided for under this Procedure shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the Procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the City of East Providence. Failure to comply with a request to inspect or copy the public records within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended in accordance with the provisions of R.I.G.L. §38-2-3(e). All copying and search and retrieval fees shall be waived if the City of East Providence fails to produce requested records in a timely manner; provided, however, that the production of records shall not be deemed untimely if the City of East Providence is awaiting receipt of payment for the costs properly charged under §38-2-4. The City of East Providence, shall, when it receives a request to inspect or copy records that do not exist or are not within its custody or control shall, in responding to the request in accordance with this Procedure, state that it does not have or maintain the requested records.

8. Under R.I.G.L. §38-2-8 any person or entity denied the right to inspect a record of the City of East Providence may petition the City Manager of the City of East Providence for a review of the determinations made by his or her subordinate. The City Manager shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition. If the custodian of the records or the City Manager of the City of East Providence determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the Attorney General. The Attorney General shall investigate said complaint and if the Attorney General shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the Superior Court of Providence County. The Attorney General shall consider all complaints filed under this Procedure to have also been filed pursuant to the provisions of §42-46-8(a), if applicable. Nothing within this Procedure shall prohibit the Attorney General from initiating a complaint on behalf of the public interest.

9. The City Manager of the City of East Providence, not later than January 1, 2013, and annually thereafter, shall state in writing to the Attorney General that all officers and employees and custodians of the records who have the authority to grant or deny persons or entities access to records under R.I.G.L. §38-2-3.16 have been provided orientation and training regarding this Procedure, and that the Attorney General may, in accordance with the provisions of Chapter 35 of Title 42, promulgate rules and regulations necessary to implement the requirements of this Procedure.

10. Under R.I.G.L. §38-2-9, the jurisdiction to hear and determine civil actions brought under this Procedure is hereby vested in the Superior Court of the Providence County. The Superior Court may examine any record which is the subject of a suit in camera to determine whether the

record or any part thereof may be withheld from public inspection under the terms of this Procedure. Actions brought under this Procedure may be advanced on the calendar upon motion of any party, or sua sponte by the Superior Court made in accordance with the Rules of Civil Procedure of the Superior Court of Providence County. The Superior Court shall impose a civil fine not exceeding Two Thousand and 00/100 (\$2,000.00) Dollars against the City of East Providence or official found to have committed a knowing and willful violation of this Procedure, and a civil fine not to exceed One Thousand and 00/100 (\$1,000.00) Dollars against the City of East Providence found to have recklessly violated this Procedure and shall award reasonable attorney fees and costs to the prevailing plaintiff. The Superior Court of the Providence County shall further order the City of East Providence found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the Superior Court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the Superior Court may award attorney fees and costs to the prevailing defendant. A judgment in the plaintiff's favor shall not be a prerequisite to obtaining an award of attorneys' fees and/or costs if the Superior Court of the Providence County determines that the defendant's case lacked grounding in fact or in existing law or a good faith argument for extension, modification or reversal of existing law.

In all actions brought under this Procedure, the burden shall be on the City of East Providence to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this Procedure.

The right of the public to inspect public records created by this Procedure shall be in addition to any other right to inspect records maintained by the City of East Providence.

If any of the provisions of this Procedure is held unconstitutional, the decision shall not affect the validity of the remainder of this Procedure. If the application of this Procedure to a particular record is held invalid, the decision shall not affect other applications of this Procedure.

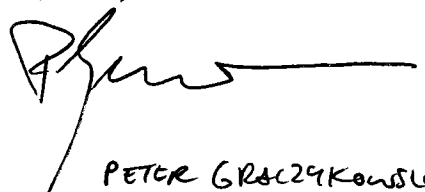
All records initially deemed to be public records which any person or entity may inspect and/or copy under the provisions of this Procedure, shall continue to be so deemed whether or not subsequent Superior Court action or investigations are held pertaining to the matters contained in the records.

Settlement agreements of any legal claims against the City of East Providence shall be deemed public records.

Every year, the Attorney General shall prepare a report summarizing all the complaints received pursuant to this Procedure, which shall be submitted to the legislature of the State of Rhode Island, and which shall include information as to how many complaints were found to be meritorious and the action taken by the Attorney General in response to those complaints.

11. Pension Records of the City of East Providence shall:

- A. "Include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established by the General laws of Rhode Island and future members of said systems, including all records concerning retirement credits purchased and ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the members' designated beneficiary or beneficiaries.
- B. Be identified as "Pension Records," and said Pension Records of all City of East Providence employees, except police officers and firefighters, who are either current or retired members of the retirement systems established by the General Laws of Rhode Island as well as all future members of said retirement systems after (June 17, 1991) shall be open for public inspections.

Approved.  
  
PETER GRACZKOWSKI  
CITY MANAGER  
8/31/12