

CITY OF APPLETON PERSONNEL POLICY	TITLE: PUBLIC RECORDS POLICY	
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I. PURPOSE

To establish guidelines and processes regarding identification, retention and dissemination of public records.

II. DISCUSSION

A representative government is dependent upon an informed electorate. It is the City of Appleton's policy that all persons are entitled to the greatest possible information regarding the affairs of their government and the official acts of those officers and employees who represent them. Further, providing persons with such information is an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information.

Therefore, the City of Appleton does hereby adopt and incorporate, as though fully set forth herein, the provisions of Wisconsin's Public Records Laws, sec. 19.31 through 19.39, Wisconsin Statutes, inclusive of all future amendments and revisions to such sections of the Wisconsin Statutes. The following provisions are intended to supplement, not to replace, or to supplant, the Wisconsin Public Records Laws or the provisions of State Statute 43.30 regarding Library records. (Please note: for purposes of this policy as it applies to Library records, when the City's ~~Technology Services~~ **Information Technology** Director is referenced, this title shall be replaced with the Library's Network Services Supervisor.) Information regarding release of personnel information can also be found in the City of Appleton Records Retention Policy. In addition, information about retention and dissemination of specific department documentation (e.g., Police reports) can be found in individual City departmental policies.

Violations of this policy will result in discipline, up to and including termination of employment.

III. ROLES & RESPONSIBILITIES

A. Records Custodians and Alternate Custodians

- 1. Role:** While Wisconsin State Statute sec. 63.09 (11)(a) makes the City Clerk the physical custodian of many records, for purposes of this policy, a custodian is an officer, department head or division head of the City of Appleton who is designated by the Mayor to keep and preserve

public records, or who is required by law to file, deposit, or keep such public record in his/her office, or is lawfully in possession or lawfully entitled to possession of public records. The City Clerk is the legal custodian of the records of the Common Council and for all Common Council boards, committees, and commissions. Each alderperson shall be the custodian of their individual official records, such as their correspondence, memorandums, and e-mail. For every department or division, the Department Director is the custodian of records for their agency. Every custodian of records shall designate ~~in writing~~ one or more employees to act in his or her absence as an alternate custodian of such records.

2. **Responsibilities:** Custodians are vested with full legal power to render decisions and carry out the duties of the City under this policy. Each custodian shall establish a procedure for handling records and shall see that all of their employees entrusted with records are informed of these procedures. If a custodian has any question about granting or denying a request to inspect or copy any record, he or she should consult with the **Legal Services Department City Attorney**.

~~Each custodian and alternate custodian shall receive training regarding public records laws as soon as practicable upon receiving these duties. Custodians and alternate custodians are personally responsible for keeping current with any developments or advancements in records keeping and the Wisconsin Public Records Laws.~~

B. Procedures

All requests for public records should be forwarded to the departmental custodian or his/her alternate within 24 hours of receipt. When request is received, the Custodian/Alternate should follow these steps (see Exhibit 1):

1. DETERMINE THE RESPONSE TO THE REQUEST

The Wisconsin Public Records Law dictates that certain actions must be taken with regards to oral requests for records and those certain more formal actions are taken in response to written requests for records. However, the state law does not expressly state how to respond to the following methods of communication. Therefore, requests made by the following means shall be responded to as follows:

a. E-mail

A request made by e-mail may be responded to via e-mail or in writing and shall have all of the formalities as though the request was made in writing.

b. Voice-mail

A request made by voice-mail shall be responded to as though it were made orally.

c. Instant Messaging/Text Messaging

A request made in either such manner shall be treated as an oral request.

2. TREAT CERTAIN DATA AS RECORDS

The Wisconsin Public Records Law provides little or no guidance as to whether the raw and perishable data of the following technologies qualify as records that must be maintained.

Therefore the Common Council determines the following status of these technologies:

a. E-mail

The data in an e-mail message may constitute a public record and is subject to maintenance as a public record. The data in an e-mail is subject to the same analysis under the public records statutes as an equivalent paper or hard copy record. The ~~Technology Services~~ **Information Technology** Director is responsible for ensuring that all e-mails are properly preserved for such analysis.

Special Rules Regarding Reproduction of E-mail Records

i. Reproducing E-mails Dated Earlier than December 31st, 2007

E-mails dated December 31st, 2007 or before, and all current and past email sent or received through the Library's email server, are not stored in an archive. The restoration and location of these e-mails is difficult and labor intensive, and in some cases not possible. Such requests often take more than thirty (30) days to comply with due to labor and technical issues. Custodians who receive requests for these records should inform the requestor of these issues. Such requests must be immediately forwarded to the ~~Technology Services~~ **Information Technology** Director who may prepare an estimate of the actual, necessary, and direct cost of locating such records and whom shall provide technical assistance to the custodian.

ii. Reproducing E-mails Dated January 1st, 2008 or later

All City of Appleton e-mail transactions dated January 1st, 2008 or later have been preserved in a searchable data archive. When requests are made for such records, custodians should clarify with the requestor, the various search terms, and e-mail boxes that the requestor would have the City search for. Once the requestor has specified search terms, the custodian should contact the ~~Technology Services~~ **Information Technology** Director for technical assistance in fulfilling the request.

iii. E-mail chains

E-mails are often sent to multiple recipients. A requestor will be provided with one copy of such an e-mail and all responses to that e-mail. Unless a requestor specifically requests otherwise, they will not be provided with multiple copies of such an e-mail showing receipt by each of the designated e-mail recipients.

b. Voice-mail

A voice-mail message is not a public record and voice-mail messages do not have to be maintained as public records. These messages are the functional equivalent of phone conversations which are not public records. Additionally, these messages also share many of the attributes of "personal notes" which are not public records either. Finally, these messages cannot be indexed or maintained in any manner that would allow for their easy classification, searching, or retrieval.

c. Instant Messaging (IM)/Text Messaging (TM)

The data involved in IM/TM communications is not subject to maintenance as a public record. IM/TM has all of the attributes of instantaneous exchange of ideas, as does a regular telephone conversation. Furthermore, the data exchange has the same technological issues as to capturing and storage of data that is present with regards to voice-mail with an additional concern - the raw data is often only briefly stored or not stored at all by the third party vendors or hosts that provide these services. Thus, this technology is even closer to a true telephone conversation than are voice-mails. Therefore, City employees and officials shall refrain from using such services for official communications purposes or for matters that would result in a public record if another format such as e-mail or written communications were employed, unless the employee or official preserves a copy of such communications by either copying them to their e-mail account, downloading the communications to their City computer, making a computer file of the communications or by printing and retaining a copy of such communications.

d. Voice Over the Internet Protocol (VOIP)

The City does not monitor nor record the data associated with the conversations that occur over VOIP. Such conversations are the very same real time voice communications as standard telephone conversations that are not public records. The only difference between these communications is the medium employed in transmitting the voice communications from one participant in the conversation to all others involved in the conversation.

e. Audio, Video, Data Transmissions & Communications

Although audio, video, data and radio transmissions and communications may be processed through City computers, the City does not routinely copy the data nor maintain records of such communications. Whenever the City copies, records, or maintains copies or recordings of such communications or transmissions, those copies may constitute public records that are subject to records requests and which must be maintained according to the appropriate records retention schedule. The Outagamie County 9-1-1 center is the custodian for police and fire radio communications.

f. Audio/Video Recordings

Unless otherwise provided herein, public records are subject to requests and must be maintained according to the retention schedules published herein.

i. Rewritable Recording Systems

Those systems where the recordings are routinely overwritten by newer recordings, such as in continuous loop videotape or digital video written to a camera's hard drive or memory, such data does not constitute a record unless it is further downloaded, printed or separately preserved to memorialize some event or proceeding. Until such time as these recordings are downloaded, printed, or separately preserved, these recordings do not have to be preserved and, as the recording equipment programs/protocols may dictate, can be overwritten, erased or otherwise destroyed. However, if such data is downloaded, printed, or separately preserved it shall be treated as a record and shall be retained in accordance with the retention schedules.

ii. Recordings made for the purpose of preparing minutes of meetings

In accordance with sec. 19.21(7), Wis. Stats., any tape recording of a meeting, as defined in sec. 19.82(2), Wis. Stats., by any City body as defined by sec. 19.82(1), to include each City board, commission and committee, may be destroyed, overwritten, or recorded over no sooner than ninety (90) days after the minutes have been approved and published if the purpose of the recording was to take minutes of the meeting.

g. Electronic Document Files

Where records, as that term is defined in sec. 19.32(2) Wis. Stats., exist in an electronic format only, such electronic records shall be maintained according to the appropriate retention schedule. Where both hard copy (i.e., paper) and electronic copies of a record exist they shall each be subject to public records requests. However, when the custodian has designated electronic records as the official records, only the electronic copy shall be retained and made available for inspection under the public records laws. Where the custodian has not made such a designation, only the hard copy shall be subject to inspection as a public record and the electronic copies shall be treated and disposed of as draft documents that do not need to be maintained beyond creation of the final hard copy.

h. Electronic logs/Temporary data files

These logs and temporary data files provide detailed information about the design and functionality of the City's computer network. These logs are routinely overwritten on a daily basis due to the high volume of traffic that is being logged. Unrestricted access to these logs and files would constitute a breach of system security and leave the system vulnerable to exploitation and hacking. In order to ensure network security, these logs are available to ~~Technology Services~~ **Information Technology** Director's authorized staff only. These determinations apply to the following types of logs and data files:

i. Syslogs for network electronic devices

All logs created by network devices such as firewalls, routers, switches, etc., which are used for monitoring and trending computer network traffic patterns and/or detecting unauthorized network traffic.

ii. Network server security, application and event logs

These logs are used to monitor activity on City network servers including successful/unsuccessful login attempts, file system access, hardware performance, etc. These logs provide detailed information about City network account ID's, file system structure, and hardware profiles.

iii. Network security appliance logs

All logs created by network security devices such as the anti-virus appliance, anti-SPAM appliance, content filtering appliance, etc., which are used to monitor specific types of unauthorized or malicious traffic on the city network. These logs identify specific network traffic patterns and/or protocols that are allowed or disallowed on the city network.

iv. Application logs

These logs are used to monitor activity on various database applications, but do not

contain specific audits of database transactions. These logs can contain version information, program variables and programming logic.

i. Emerging Technologies and Records Retention

As new information technologies emerge the ~~Technology Services~~ **Information Technology** Director shall evaluate these technologies and their benefit to City operations. The Director shall consider whether any of these technologies provide the capacity to archive public records created by these technologies. Whenever it is economically and practically feasible to archive records created by such technologies, archiving shall be incorporated into any deployment of the technologies. Whenever the technologies do not provide for such archiving capabilities, the ~~Technology Services~~ **Information Technology** Director shall consider whether the benefits of employing such technologies outweigh the risks that some public records may not be retained by deployment of such technologies. Where such benefits outweigh these risks City employees shall refrain from using such technologies for official communications purposes or for matters that would result in a public record if another format such as email or written communications were employed. In the event that such technologies are used for such communications purposes, the employee shall preserve a copy of such communications by either copying them to their e-mail account, downloading the communications to their City computer, making a computer file of the communications or by printing and retaining a copy of such communications. The ~~Technology Services~~ **Information Technology** Director shall also ensure that, as soon as practical and economically feasible, archiving systems are obtained for any information technology that is deployed without an archiving system.

j. Use of Technologies to Avoid Duty to Preserve Public Records Prohibited

No City employees or volunteers shall use or employ any form of communications or information technology with the intent or design to circumvent the records retention requirements of this ordinance. For example, Text Messaging shall not be used in lieu of e-mail to share or create a public record above. In addition, City officials (e.g., alderpersons) shall not use personal e-mail accounts in lieu of City-supplied e-mail accounts for official City business communications.

3. PROVIDE ACCESS TO RECORDS AND COLLECT FEES

a. Identify Format for Delivery of Records

Except as otherwise provided by law, any requester may receive or inspect a record in the very same format in which the City maintains the record. However, whenever it is necessary to redact or excise portions of a record in order to comply with the Wisconsin Public Records Laws, the redactions shall be made with the assistance of the ~~Technology Services~~ **Information Technology** Department. Whenever electronic redaction or excisions cannot be done in a secure manner that preserves such redactions and prevents the viewing of the redacted information, then such redactions should be made by hand, not electronically, and the requestor shall only receive a hard copy of the redacted record. **The review of all requests for copies of records shall be made by the custodian of the record or designee. A requestor may not use a smart phone, camera or other device to copy or photograph records.** A requestor may not be charged for the time necessary to review a record and to redact or excise non-releasable materials.

b. E-mail Records

When practicable, records may be e-mailed to the requestor. In order to ensure the integrity of City records, any e-mailed document shall be converted to a secure format prior to sending the document to anyone outside of the City government. There shall not be any reproduction charge for e-mailing records; however, such records may still be subject to payment of a location fee as established in sec. 19.35(3)(c), Wis. Stats.

c. Collect Fees

i. Reproduction Fees

To the extent possible, the ~~Technology Services~~ **Information Technology** Director and the Finance Director shall develop a uniform fee schedule for the reproduction of records that shall be used by every department and division. Such schedule shall include the following provisions and considerations:

- a.) Fees imposed upon records requestor may not exceed the actual, necessary and direct costs of reproducing and/or transcribing of the record, unless a fee is otherwise specifically established or authorized by state or federal law.
- b.) If the record exists in such a format that it cannot be easily reproduced, such as a mock-up of a building, then the custodian may photograph the record and may charge the requestor for the actual, necessary, and direct costs of such photographing and photographic processing.
- c.) The fee schedule for photocopying records shall be:

No charge for copying records of which in the normal course of business ten (10) or more copies are made, such as agendas, minutes and reports;

Full cost of reproduction for materials such as films, tapes, computer printouts, etc. not otherwise identified in the schedule developed under this subsection. In such cases, the department/division head who is the records custodian, in consultation with the Director of Finance, must determine the costs for reproduction of such records. The determination of these costs shall be made by utilizing a practice or factors that are as uniform as practicable across City departments/divisions.

ii. Other Fees

a.) Location Fee

If the cost of locating a requested record is fifty dollars (\$50) or more, the requester shall pay the full cost, as determined by the department or director. Such cost shall not exceed the actual, necessary and direct cost of locating such record. Whenever it is determined that such location costs will exceed fifty dollars (\$50), the requestor shall be required to post a deposit with the custodian that is equal to the reasonable good faith estimate of such costs.

b.) Mailing Fee

Custodians shall impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or record that is mailed or shipped to the requester.

iii. Fee Waivers

A custodian may provide copies of a record without charge or at a reduced charge where the department director determines in writing that waiver or reduction of the fee is in the public interest.

iv. Prepayment of Fees

Custodians may require prepayment by a requester of any fee or fees imposed if the total amount exceeds five dollars (\$5) and a custodian shall require prepayment by a requester of any fee or fees imposed if the total amount exceeds fifty dollars (\$50). If prepayment is required, the custodian shall not process the request until such prepayment has been posted with the custodian.

4. TIME FOR COMPLIANCE AND RESPONSE TO REQUESTS

a. Time

The fulfillment of public records requests is a high priority for the City. Therefore, each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of her/his determination to deny the request in whole or in part and the reasons therefore. If a request may take more than ten (10) business days to process, then the custodian must respond to the requestor within those 10 days with an estimate of when such processing shall be completed and an explanation of the reasons supporting that estimate.

b. City Attorney Consultation Required

Before any custodian may deny access to any records or portion thereof, the custodian must consult with the City Attorney. Such consultation shall occur as soon as practicable after the custodian has assembled and reviewed the requested record. In any response to a requestor, the custodian shall include a statement that he or she consulted the City Attorney regarding the denial of access to any records. Any denial of access made by a custodian without such consultation and statement is not considered a response from the City of Appleton.

5. DO NOT DESTROY RECORDS - NO DESTRUCTION OF RECORDS WHILE A REQUEST IS PENDING OR WHILE A DENIAL OF A REQUEST IS BEING APPEALED.

No custodian may destroy any record at any time after the receipt of a request for inspection or copying of the record until after the request is granted or until at least sixty (60) days after the date that the request is denied. If any legal action is pending regarding or related to the record, the record may not be destroyed without the express authorization of the City Attorney. No record that is the object of or which has been produced pursuant to a discovery order or a subpoena may be destroyed without the express consent of the City Attorney.

No record may be destroyed that has been identified as, or that may have value as, evidence in

any civil or criminal legal proceeding, labor arbitration or disciplinary action. No record may be destroyed at any time within sixty (60) days of the denial of a request to review the record or any part thereof.

6. RETAIN RECORDS - RETENTION SCHEDULES

The City, in accordance with sec. 19.21(4)(b) and 16.61(3)(e). Wis. Stats. adopts the following records retention schedules. (Note: the Appleton Public Library shall follow its own records retention schedule set 2/27/2006.)

a. Retention Schedule For Records Created Prior to June 1, 2010

All records created or maintained prior to June 1, 2010 shall continue to be preserved in accordance with the records retention schedules existing at the time the records were created.

b. Retention Schedule For Records Created June 1, 2010 and thereafter

For all records created June 1, 2010 and thereafter, the City Clerk, in consultation with the City Attorney, shall develop the City of Appleton's Records Retention Schedule and such records shall be maintained in accordance with the provisions of that schedule. Such schedule must be approved by the Wisconsin Public Records Board. In the event that such a records retention schedule is not approved by the Wisconsin Public Records Board, all previously adopted City records retention schedules shall remain in full force and effect until such time as a records retention schedule is adopted in accordance with this subsection.

c. Compliance with Federal or Other Retention Requirements

Notwithstanding the City of Appleton Records Retention Schedule set forth above, custodians may not destroy any record where any contract, grant, funding conditions, state or federal statute require that such records be maintained for a longer period of time.

d. Offer of Records to State Historical Society before Destruction

The City is required to offer all obsolete records to the State Historical Society in accordance with sec. 19.21(4)(a), Wis. Stats., prior to destruction of those records. The ~~Technology Services~~ **Information Technology** Director or any department/director may apply to the State Historical Society for a waiver of this requirement as to certain categories of records under such person's authority that they reasonably believe have little or no significant historical value.

Any City officer, or the director of any department or division of City government may, with the approval of the Mayor, and after consulting with the ~~Technology Services~~ **Information Technology** Director, retain and preserve public records in his/her possession by means of microfilm, or another reproduction method, optical imaging or electronic formatting. Such records shall meet the standards for photographic reproduction set forth in sec. 16.61(7)(a) and (b), Wis. Stats. (2001-2002 Wis. Admin. Code § PR 1 (current through Wis. Admin. Reg. No. 467, Nov. 1994) and Wis. Admin. Code § Adm. 12 (current through Wis. Admin. Reg. 554, Feb. 2002)). Such records shall be considered original records for all purposes. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of state law and this policy.

The original hardcopy of any document or record which has been converted to and which is also maintained as a microfilm, optical imaging, electronic formatting, or other reproduction in accordance with this section may be destroyed in compliance with this policy.

PROCEDURES

for records not specifically identified by Chapter 19 in the Wisconsin State Statutes

1. Determine the Response to the Request

<u>How Requested</u>	<u>Response</u>	<u>Considerations</u>
By e-mail	Via e-mail or in writing	Should have all formalities as though the request was made in writing
By voice-mail	Responded as though it were made orally	
By Instant or Text Messaging	Treat as an oral request	

2. Treat Data as Records:

	<u>Action Needed</u>	<u>Considerations/Notes</u>
Email - Dated earlier than 12/31/07	Immediately forward requests to TS Director	Not stored in archive
Email - Dated 1/1/08 or later	Requestor should specify terms of search, then custodian should contact the TS Director for technical assistance.	Preserved in a searchable data archive
Email chains	Treat as email (noted above)	Requestor will not be provided with multiple copies of such an email showing receipt by each of the designated email recipients
Voice-mail	Do not need to be retained	Do not need to be maintained as they are recorded
Instant Messaging (IM)/Text Messaging (TM)	Do not need to be retained.	Not subject to maintenance as a public record
Voice Over the Internet Protocol (VOIP)	Do not need to be retained	Not monitored or recorded – similar to standard telephone
Audio, Video, Data Transmissions & Communications	If copied or recorded, maintain as a public record and according to records retention schedule	Not routinely copied or maintained
Audio/Video Recordings	Recordings made for purpose of preparing minutes of meetings: may be destroyed, overwritten, recorded over no sooner than 90 days after minutes are approved & published	Rewritable Recording Systems: Not constituted as a record unless downloaded, printed or separately preserved
Electronic Document Files	Maintained according to appropriate retention schedule.	If both electronic and paper copies exist, they shall each be subject to public records request.
Electronic logs/Temporary data files	Contact TS Director if requested	<ul style="list-style-type: none"> Routinely overwritten on a daily basis TS Director’s authorized staff to have access only
Emerging Technologies and Records Retention	If technologies are used for City communication purposes, copy them to e-mail account, download to City computer, make computer file, print and retain	TS Director will determine which technologies outweigh the risks that some public records may not be retained by deployment of such technologies.
Use of Technologies to Avoid Duty to preserve Public Records Prohibited	Do not use any form of communications with the intent to circumvent the records retention requirements	Ex: Text messaging not to be used in lieu of e-mail to share or create a public record