

ORDINANCE NO. 2005- 1

TOWN OF SCHLESWIG
MANITOWOC COUNTY, WI.

PUBLIC RECORDS
ORDINANCE

The Town Board of the Town of Schleswig, Manitowoc County, WI., pursuant to Chapter 19, Wis. Stats., and its police powers, for the public welfare and public good do ordain as follows:

Section 1: Definitions.

- (a) **Authority.** Any of the following Town of Schleswig entities having custody of a Town record: an office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.
- (b) **Custodian.** That officer, department head, division head, or employee of the Town designated under Section 3 or otherwise responsible by law to keep and preserve any Town records or file, deposit or keep such records in his or her office, or is lawfully in possession or entitled to possession of such public records and who is required by this Section to respond to requests for access to such records.
- (c) **Employee.** Any individual who is employed by the Town, other than an individual holding local public office, or any individual who is employed by an employer other than the Town.
- (d) **Local Public Office.** Any of the following offices (i) any elective office of the Town (ii) a Town manager (iii) an appointive office or a position in the Town in which the individual serves for a limited term. The term also includes any appointed office or position of the Town in which an individual serves as the head of a department, but does not include a position filled by a municipal employee. The following positions are positions of local public office: the Town Clerk, Town Treasurer, Town Constable, Town Plan Commission, Town Assessor, Town Building Inspector.
- (e) **Record.** Any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts, and optical disks. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a

public library which are available for sale, or which are available for inspection at a public library.

Section 2: Maintenance of Records.

- (a) **Duty to Maintain.** Except as otherwise provided herein, each officer and employee of the Town shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of the officer or employee or his or her deputies, or to the possession or control of which he or she or they may be lawfully entitled as such officers or employees.
- (b) **Successor Officer.** Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his or her successor all records then in his or her custody and the successor shall receipt therefor to the officer or employee, who shall file said receipt with the Town Clerk. If a vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted for by the Town Clerk, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

Section 3: Designated Legal Custodians.

- (a) **Elected Official.** Each elected official is the legal custodian of his or her records and the records of his or her office. However, the official may designate in writing the Town Clerk to act as the legal custodian.
- (b) **Town Board; Other Authorities.** Unless provided in Subsection (c) or otherwise prohibited by law, the Town Clerk or the Town Clerk's designee shall act as legal custodian for the Town and for any committees, commissions, boards, or other authorities created by ordinance or resolution of the Town Board. The following offices or authorities shall have as a legal custodian of records the individual so named:
 - General Town/Town Board
 - Records
 - Financial records
 - Police Department records
 - Assessment records
 - Building Records
 - Town Clerk
 - Town Treasurer
 - Town Constable
 - Town Assessor
 - Town Building Inspector
- (c) **Undesignated.** For every authority not specified in Subsections (a) and (b), the authority's chief administrative officer holding local public office is the legal custodian for the authority, but the officer may designate the Town Clerk to act as the legal custodian. Such designation shall be in writing.

Section 4: Public Access to Records.

- (a) **Right to Inspect.** Except as provided in Section 6 any person has a right to inspect a record and to make or receive a copy of any record as provided in Sec. 19.35(1), Wis. Stats.

- (b) **Availability.** Records will be available for inspection and copying during all regular office hours.
- (c) **Place to Inspect.** A requester shall be permitted to use facilities comparable to those available to Town employees to inspect, copy or abstract a record.
- (d) **Supervision.** The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.
- (e) **Fee Schedule.** A requester shall be charged a fee to defray the cost of locating and copying records as follows:
 - (1) The cost of photocopying shall be twenty-five cents (25¢) per page. This cost has been calculated not to exceed the actual, necessary and direct cost of reproduction.
 - (2) If the form of a written record does not permit photocopying, the actual and necessary cost of photographing and photographic processing shall be charged.
 - (3) The actual full cost of providing a copy of other records not in printed form on paper, such as films, computer printouts and audio- and video-tapes, shall be charged.
 - (4) If mailing or shipping is necessary, the actual cost thereof shall be charged.
 - (5) There shall be no charge for locating a record unless the actual cost therefor exceeds Fifty Dollars (\$50.00), in which case the actual cost shall be determined by the legal custodian and charged to the requester.
 - (6) The legal custodian shall estimate the cost of all applicable fees and shall require a cash deposit adequate to assure payment, if such estimate exceeds Five Dollars (\$5.00).
 - (7) Elected and appointed officials of the Town shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.
 - (8) The legal custodian may provide copies of a record without charge or at a reduced charge where the legal custodian determines that waiver or reduction of the fee is in the public interest.
- (f) **Public Records Notice.** Pursuant to Sec. 19.34, Wis. Stats., and the guidelines therein listed, each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. The notice shall also separately identify each position of the authority that constitutes a local public office. This Subsection does not apply to members of the Town Board.

Section 5: Procedure for Access to Records.

- (a) **Request to Inspect or Copy – In General.** A request to inspect or copy a record shall be made to the legal custodian or to the Town Clerk who shall forward it to the legal custodian as soon as practicable. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a

request must be in writing before an action to enforce the request is commenced under Sec. 19.37, Wis. Stats. Except as provided below, no request may be refused because the request is received by mail, unless prepayment of a fee is required under Section 4(e).

- (b) **Custodian Response.** Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor. If the legal custodian, after conferring with the Town Attorney, determines that a written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his or her request in a manner which would permit reasonable compliance.
- (c) **Denial of Request.** A request for a record may be denied as provided in Section 6. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within five (5) business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. Every written denial of a request shall inform the requester that, if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Sec. 19.37(1), Wis. Stats., or upon application to the attorney general or a district attorney.
- (d) **Request to Inspect and Copy – Records Regarding Employment or Search Warrant.** The procedure set forth in this subparagraph (d) will apply to the following records: (i) a record containing information relating to an employee that is created or kept by the authority as the result of an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer; (ii) a record obtained by the authority through a subpoena or search warrant; or (iii) a record prepared by an employer other than an authority if that record contains information relating to an employee of that employer unless the employee authorizes the authority to provide access to that information.
 - (1) **Notice to Record Subject.** If the authority decides to permit access to a record described in this subsection, the authority shall, before permitting access and within three (3) days after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains, either by certified mail or personal service. The notice shall briefly describe the requested record and include a description of the rights of the record subject set forth in the following paragraphs.
 - (2) **Record Subject Response.** Within five (5) days after receipt of a notice, a record subject may provide written notification to the authority of his/her intent to seek a court order restraining the authority from providing access to the requested record.
 - (3) **Action by Record Subject.** Within ten (10) days after receipt of a notice, a record subject may commence an action seeking a court order to restrain the authority from providing access to the requested record. If such an action is commenced, the authority shall be named as a defendant. The record requester may intervene in the action as a matter of right. If the record requester does not intervene, the authority shall notify the requester of the results of the proceeding.
 - (4) **Time for Authority to Act.** The authority shall not provide access to a requested record within twelve (12) days of sending a notice pertaining to that record under this

section. If the record subject commences an action under this section, the authority shall not provide access to the requested record during the pendency of the action and until any appeal is decided, until the period for appealing or petitioning for review expires, until a petition for review is denied, or the authority receives written notice from the record subject that an appeal or petition will not be filed, whichever first occurs.

- (5) **Exceptions.** This subsection does not apply (i) to access to a record pertaining to an employee provided to the employee who is the subject of the record or to his or her representative to the extent required under Sec. 103.13, Wis. Stats., or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to a collective bargaining agreement under Chapter 111; and (ii) to access to a record produced in relation to a function produced for equal rights, discrimination, or fair employment law compliance purposes under Sec. 106.54, 230.45, or Chapter 111 of the Wisconsin Statutes.
- (6) **Officer or Employee Right to Augment Record.** If an authority decides to permit access to a record containing information relating to a record subject who is an officer or employee of the authority holding a local public office, the authority shall serve written notice of that decision on the record subject by certified mail or personal service before permitting access and within three (3) days after making the decision to permit access. The notice shall describe the requested record and include a description of the rights of the record subject as follows: within five (5) days after receipt of the notice, a record subject may augment the record to be released with written comments and documentation selected by the record subject. In that event, the authority shall release the record as augmented by the record subject.

Section 6: Limitations on Right to Access.

- (a) **Records Exempt from Inspection.** Although not intended to be exhaustive, the following list of records are exempt from inspection under this Chapter pursuant to Sec. 19.36, Wis. Stats. and other applicable law:
 - (1) Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law.
 - (2) Any record relating to investigative information obtained for law enforcement purposes if federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state.
 - (3) Computer programs and files, although the material used as input for a computer program/file or the material produced as a product of the computer program is subject to inspection.
 - (4) A record or any portion of a record containing information qualifying as a common law trade secret.
 - (5) Information maintained, prepared, or provided by the Town concerning the home address, home electronic mail address, home telephone number, or social security number of an employee or an individual holding local public office, unless the employee or individual holding local public office authorizes the Town to provide access to such information. This exception does not apply to the home address of an

- individual who holds an elective public office or to the home address of an individual who, as a condition of employment, is required to reside in a specified location.
- (6) Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to the disposition of the investigation.
 - (7) Information pursuant to the employee's employment examination, except an examination score if access to the score is not otherwise prohibited.
 - (8) Information pertaining to one or more specific employees that is used by the Town 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.
 - (9) A record prepared or provided by an employer, performing under a contract requiring the payment of prevailing wages, containing an employee's personally identifiable information.
- (b) **Public Library Circulation Records.** As provided by Sec. 43.30, Wis. Stats., public library circulation records are exempt from inspection under this Section.
- (c) **Records which may be Exempt under Balancing Test.** In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the Town Attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, the following:
- (1) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.
 - (2) Pursuant to Sec. 19.85(1)(a), Wis. Stats., records of current deliberations after a quasi-judicial hearing.
 - (3) Pursuant to Sec. 19.85(1)(b) and (c), Wis. Stats., records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance, or discipline of any Town officer or employee, or the investigation of charges against a Town officer or employee, unless such officer or employee consents to such disclosure.
 - (4) Pursuant to Sec. 19.85(1)(d), Wis. Stats., records concerning current strategy for crime detection or prevention.
 - (5) Pursuant to Sec. 19.85(1)(e), Wis. Stats., records of current deliberations or negotiations on the purchase of Town property, investing of Town funds, or other Town business whenever competitive or bargaining reasons require nondisclosure.
 - (6) Pursuant to Sec. 19.85(1)(f), Wis. Stats., financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such history or data.
 - (7) Pursuant to Sec. 19.85(1)(g), Wis. Stats., communications between legal counsel for the Town and any officer, agent or employee of the Town, when advice is being rendered concerning strategy with respect to current litigation in which the Town or

any of its officers, agents or employees is or is likely to become involved, or communications which are privileged under Sec. 905.03, Wis. Stats.

(8) Pursuant to Sec. 19.85(1)(h), Wis. Stats., requests for confidential written advice from an ethics board, and records of advice given by such ethics board on such requests.

(d) **Modifying Records to Separate Exempt from Nonexempt Information.** If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the Town Attorney prior to releasing any such record and shall follow the guidance of the Town Attorney when separating out the exempt material. If, in the judgment of the custodian and the Town Attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

Section 7: Severability.

The provisions of this ordinance are severable. If any section, subsection, paragraph, sentence, clause, or phrase is determined to be invalid by a court of competent jurisdiction, such determination will not affect the remaining portions hereof.

Section 8: Repeal of Conflicting Ordinances.

All ordinances or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Adopted: 3/10/05

Town of Schleswig

Attest: *Dellen Grawley*
Town Clerk

By: *Michael W. Cook*
Town Chairperson

DRAFTED BY:

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