

ORDINANCE 2014- 10

VILLAGE OF NEW RICHMOND, OHIO

Council for the Village of New Richmond, Ohio met in regular session this 22nd day of April, 2014 with the following members present:

Richard Feldkamp,
Richard Hilt,

Mary Allen,
Amanda Davidson,

Paul Vanderbosch,
Gary Skeene

Councilperson Skeene moved for adoption of the following:

**AN ORDINANCE AMENDING THE NEW RICHMOND PUBLIC RECORDS
POLICY**

Whereas: The village adopted the New Richmond Public Records Policy via Ordinance 2008-4, and

Whereas: Amendments to this ordinance have been proposed by the Village Solicitor, and

Whereas: These amendments are formally attached hereto and shown as exhibit "A".

NOW THEREFORE BE IT ORDAINED, by the Council of the Village of New Richmond, State of Ohio a majority of its members concurring:

1. Amends the Public Records Policy as formally attached hereto and shown as exhibit "A".
2. That council finds and determines that all formal actions relative to the passage of this ordinance were taken in an open meeting and that all deliberations of council which resulted in the passage of this Ordinance were taken in meetings open to the public, in full compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Councilperson Allen seconded the motion to adopt the foregoing Ordinance and upon roll call the vote was as follows:

Richard Feldkamp yes
Mary Allen yes
Paul Vanderbosch yes
Richard Hilt yes
Amanda Davidson yes
Gary Skeene yes

First Reading 3-25-14
Second Reading 4-8-14
Third Reading 4-22-14

Adopted: 4-22-14
Date

ATTEST:

Donna Hammons
CLERK OF COUNCIL, Donna Hammons

Ramona Carr
MAYOR, Ramona Carr

Approved as to form and content:

Matthew Faris
SOLICITOR, Matthew Faris

Ordinance 2008-4
As Amended by Ordinance 2013-29

VILLAGE OF NEW RICHMOND

PUBLIC RECORD POLICY

It is the policy of the Village of New Richmond, Clermont County, Ohio to comply with the Ohio Public Records Law as set forth in Ohio Revised Code Section 149.43. In order to comply with that law, New Richmond adopts this policy. In interpreting and implementing this policy, New Richmond recognizes that from time to time Court decisions, both federal and state may be issued which impact the interpretation and implementation of the public records law. This policy shall be interpreted and implemented in a manner which complies with the state and federal court decisions which may be issued from time to time. In addition, should the State Legislature pass further amendments to the public records law, this policy shall automatically be interpreted and implemented to comply with the amendments passed by the State Legislature.

DEFINITIONS

As used in this policy:

“Records” is defined by ORC 149.011(G) as:

“Records” includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, (Section 1301.06(G) states: “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means), created or received by or coming under the jurisdiction of the Village of New Richmond, Ohio, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the Village of New Richmond, Ohio.

In addition ORC 149.40 provides that the Village of New Richmond, Ohio shall cause to be made only such records as 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 affected by the agency’s activities.

In responding to a public records request, The Village of New Richmond, Ohio is not required to create a new record.

Revised Code Section 149.43 provides that "Public record" means records kept by New Richmond. "Public record" does not mean any of the following:

(a) Medical records; "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records; "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(h) Confidential law enforcement investigatory records " Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(1) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(2) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(3) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(4) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records; "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(n) Donor profile records; "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information; "Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation:

(1) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, or EMT, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;

(2) Information compiled from referral to or participation in an employee assistance program;

(3) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(4) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal

identification and investigation by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;

(5) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's compensation unless the amount of the deduction is required by state or federal law;

(6) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(7) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in ORC 149.43(A)(7) and (B)(9) and in this policy, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in ORC 149.43(A)(7) and (B)(5) and in this policy, "correctional employee" means any employee of the department of rehabilitation and correction who in the

course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

As used in ORC 149.43(A)(7) and (B)(5) and in this policy, "youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

As used in ORC 149.43(A)(7) and (B)(9) and in this policy, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in ORC 149.43 (A)(7) and (B)(9) and in this policy, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen; "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(1) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(2) The social security number, birth date, or photographic image of a person under the age of eighteen;

(3) Any medical record, history, or information pertaining to a person under the age of eighteen;

(4) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any

recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared pursuant to division(A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency.

(y) Records listed in section 5101.29 of the Revised Code;

(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;

(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division.

In addition as used in this policy "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

"Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

"Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

"Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

PREPARATION AND RELEASE OF PUBLIC RECORDS

If someone wishes to review a public record, the record shall be pulled from its place of storage and the requestor shall be permitted in the presence of a Village employee to review the public record unless the requested record contains information which is not subject to release under the public records law. Once the file has been reviewed and material redacted, the requested shall be permitted to inspect the record in the presence of a Village employee. Upon completion of the review, the record shall be promptly returned to storage.

(1) Upon request and subject to division (8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (8) of this section, upon request, New Richmond shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, New Richmond shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, New Richmond shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, New Richmond shall organize and maintain public records in a manner that they can be made available for inspection or

copying in accordance with this section. New Richmond shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that New Richmond cannot reasonably identify what public records are being requested, New Richmond may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, New Richmond shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude New Richmond from relying upon additional reasons or legal authority in defending a Court action commenced by the requestor.

(4) Unless specifically required or authorized by state or federal law or in accordance with this section, New Richmond will not limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.

(5) New Richmond may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of New Richmond to identify, locate, or deliver the public records sought by the requester.

(6) If any person chooses to obtain a copy of a public record in accordance with this section, New Richmond may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. New Richmond shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which New Richmond keeps it, or upon any other medium upon which New Richmond determines that it reasonably can be duplicated as an integral part of the normal operations of New Richmond. When the person seeking the copy makes a choice under

this division, New Richmond shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires New Richmond to allow the person seeking a copy of the public record to make the copies of the public record.

(7) Upon a request made in accordance with this section and subject to division (6) of this section, New Richmond shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. New Richmond may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

New Richmond limits the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) New Richmond is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justifiable claim of the person.

(9) Upon written request made and signed by a journalist on or after December 16, 1999, New Richmond, with regard to the records of a specified peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation shall disclose to the journalist the address of the actual personal residence

of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT and, if the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

This division also applies to journalist requests for customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information.

As used in this division, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.(10) If the record that is being sought to be reviewed and/or released contains peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information the affected employee will be notified in advance of the records review and release so that the affected employee may take steps to protect whatever personal interest the employee may have.

COSTS

There is no charge for viewing (inspecting) public records. Copies of public records may be charged at the following rates (actual costs): 1) Paper Copies- \$0.10 per page, single-sided; \$0.14 per page for double-sided; 2) Downloaded computer files on a compact disk- \$1.00 per disk; 3) Requests to have records mailed will incur additional charges of the actual cost of postage and mailing supplies. The Village may require the estimated

copy costs and postage before copies are made. Monies paid to the Village under this section shall be receipted with the proceeds paid to the Fiscal Officer.

COURT ACTIONS

If a person allegedly is aggrieved by the failure of New Richmond to promptly prepare a public record and to make it available to the person for inspection in accordance with ORC 149.43 or by any other failure of New Richmond to comply with an obligation in accordance with ORC 149.43, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with ORC 149.43, that may award court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that may include an order fixing statutory damages under ORC 149.43. The mandamus action may be commenced in the court of common pleas of Clermont County, Ohio, in the Ohio Supreme Court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the Twelfth Appellate District of Ohio pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution. ORC 149.43 governs court actions and is incorporated herein by reference.

DISTRIBUTION OF POLICY

New Richmond shall distribute this public records policy to the Village Administrator, who is designated as the employee of New Richmond who is the records custodian or records manager or otherwise has custody of the records of that office. The Administrator shall acknowledge receipt of the copy of the public records policy. New Richmond shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where New Richmond has branch offices. New Richmond may post its public records policy on the internet web site of New Richmond. New Richmond shall include its public records policy as part of its Personnel Policy.