

FREEDOM OF INFORMATION LAW RULES AND REGULATIONS FOR THE TOWN OF BIG FLATS

(THE TOWN OF BIG FLATS BY THIS POLICY SEEKS TO COMPLY WITH NY LAW ON FREEDOM OF INFORMATION WHICH IS PRESENTLY ENCODED AT NY PUBLIC OFFICERS LAW, ARTICLE 6 AND DOES NOT EXTEND ITSELF BEYOND THE REQUIREMENTS OF THAT STATUTE AND CASES INTERPRETING IT.)

1. DESIGNATIONS:

Records Access Officer: There shall be one (1) Records Access Officer for the Town of Big Flats (hereinafter referred to as “Town”). The Town Clerk is designated to be such officer. The Town Clerk or a person designated by the Town Clerk shall be in charge of all of those records of the municipality.

“**Record**” means any information kept, held, filed, produced or reproduced by, with or for the Town of Big Flats, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

The Fiscal Officer shall be the Bookkeeper of the Town of Big Flats.

2. LOCATION:

Requests to inspect or secure copies of records must be made in writing at the office of the Town Clerk of Big Flats Town, 476 Maple Street, Big Flats, NY 14814 for all records under the Town Clerk’s charge.

The Records Access Officer will determine and advise the requester within five (5) business days of the request either a) the time and place where the requested records are available for inspection, the persons from whom such records may be obtained and the fees for copies of the records or b) that the request is denied. The records generally shall be made available at the office of the Records Access Officer unless indicated otherwise to the requester. See Section 6 below for details regarding this process.

3. DUTIES

The Records Access Officer is also responsible for:

Assisting the requester in identifying requested records, if necessary,

Upon locating the records, take one of the following actions:

1. Make records available for inspection, or 2. deny access to the records in whole or in part and explain in writing the reasons there for.

Upon request for copies of records: 1. Make a copy available upon proper payment of fees.

Upon request, certify that a record is a true copy,

Upon failure to locate records, certify that, the Town is not the custodian for such records, or the records of which the Town is a custodian cannot be found after diligent search.

4. TIME

Records available for inspection by the public may be inspected or copied, if a request is granted, on all days excluding Saturdays, Sundays, Public Holidays, and any other day on which the Town of Big Flats Offices is closed for general business, between the hours of 9:00 a.m. and 4:00 p.m.

5. RECORDS AVAILABLE

All records of the Town of Big Flats shall be available for the public inspection and copying except that the Town of Big Flats may deny access to records or portions thereof that:

- a. Are specifically exempted from disclosure by State or Federal statute,
- b. If disclosed would constitute an unwarranted invasion of personal privacy under the provisions of Section 89 subdivision 2 of the Public Officers Law of the State of New York,
- c. If disclosed would impair present or imminent contract awards or collective bargaining negotiations,
- d. Are trade secrets or are submitted to a Town by a commercial enterprise or derived from information obtained from a commercial enterprise and which is maintained for the regulation of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise,
- e. Are compiled for law enforcement purposes and which if disclosed, would interfere with law enforcement investigation or judicial proceedings, or deprive a person of a right to a fair trial or impartial adjudication, identify a confidential source or disclose confidential information relating to a criminal investigation, or reveal criminal investigative techniques or procedures, except routine techniques and procedures,
- f. If disclosed would endanger the life or safety of any person,
- g. Are inter-Town or intra-Town materials which are not,
 1. statistical or factual tabulations or data,
 2. instructions to staff that affect the public, or
 3. final Town policy or determinations, or
 4. external audits, including but not limited to audits performed by the NYS comptroller or the Federal Government.
- h. Are examination questions or answers which are requested prior to the final administration of such questions.
- i. if disclosed, would jeopardize the capacity of the Town of Big Flats or any other Town or entity that has shared information with the Town or other Towns to guarantee the security of its information technology assets, such assets encompassing both electronic information, systems and infrastructures.

With regard to disclosure that may constitute an unwarranted invasion of personal property the Town may, if appropriate, delete identifying details when it makes records available.

An unwarranted invasion of personal privacy includes, but shall not be limited to:

- i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
- ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
- iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the Town requesting or maintaining it;
- v. disclosure of information of a personal nature reported in confidence to the Town of Big Flats and not relevant to the ordinary work of such Town;
- vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law; or

vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.

Unless otherwise provided by this article, disclosure shall **not** be construed to constitute an unwarranted invasion of personal privacy pursuant the above:

- i. when identifying details are deleted;
- ii. when the person to whom a record pertains consents in writing to disclosure;
- iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to himself or herself; or
- iv. when a record or group of records relates to the right, title or interest in real property, or relates to the inventory, status or characteristics of real property, in which case disclosure and providing copies of such record or group of records shall not be deemed an unwarranted invasion of personal privacy, provided that nothing herein shall be construed to authorize the disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.

Nothing in this article shall permit disclosure which constitutes an unwarranted invasion of personal privacy as defined in the above section if such disclosure is prohibited under section ninety-six of the Public Officers Law.

Section 96 of the Public Officers Law provides as follow:

(1) The Town may not disclose any record or personal information unless such disclosure is:

(a) pursuant to a written request by or the voluntary written consent of the data subject, provided that such request or consent by its terms limits and specifically describes:

- (i) the personal information which is requested to be disclosed;
- (ii) the person or entity to whom such personal information is requested to be disclosed; and

(iii) the uses which will be made of such personal information by the person or entity receiving it; or

(b) to those officers and employees of, and to those who contract with, the Town that maintains the record if such disclosure is necessary to the performance of their official duties pursuant to a purpose of the Town required to be accomplished by statute or executive order or necessary to operate a program specifically authorized by law; or

(c) subject to disclosure under article six of this The Public Officers Law, unless disclosure of such information would constitute an unwarranted invasion of personal privacy as defined in above; or

(d) to officers or employees of another governmental unit if each category of information sought to be disclosed is necessary for the receiving governmental unit to operate a program specifically authorized by statute and if the use for which the information is requested is not relevant to the purpose for which it was collected; or

(e) for a routine use, which is defined in subdivision ten of section ninety-two of The Public Officers Law as follows: The term "routine use" means, with respect to the disclosure of a record or personal information, any use of such record or personal information relevant to the purpose for which it was collected, and which use is necessary to the statutory duties of the Town that collected or obtained the record or personal information, or necessary for that Town to operate a program specifically authorized by law.; or

(f) specifically authorized by statute or federal rule or regulation;

or

(g) to the United States Census Bureau for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title XIII of the United States Code; or

(h) to a person who has provided the Town with advance written assurance that the record will be used solely for the purpose of statistical research or reporting, but only if it is to be transferred in a form that does not reveal the identity of any data subject; or

(i) pursuant to a showing of compelling circumstances affecting the health or safety of a data subject, if upon such disclosure notification is transmitted to the data subject at his or her last known address; or

(j) to the state archives as a record which has sufficient historical or other value to warrant its continued preservation by the state or for evaluation by the state archivist or his or her designee to determine whether the record has such value; or

(k) to any person pursuant to a court ordered subpoena or other compulsory legal process; or

(l) for inclusion in a public safety Town record or to any governmental unit or component thereof which performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, provided that, such record is reasonably described and is requested solely for a law enforcement function; or

(m) pursuant to a search warrant; or

(n) to officers or employees of another Town if the record sought to be disclosed is necessary for the receiving Town to comply with the mandate of an executive order, but only if such records are to be used only for statistical research, evaluation or reporting and are not used in making any determination about a data subject.

(2) Nothing shall require disclosure of:

(a) personal information such as a Social Security Account Number which is otherwise prohibited by law from being disclosed;

(b) patient records concerning mental disability or medical records where such disclosure is not otherwise required by law;

(c) personal information pertaining to the incarceration of an inmate at a state correctional facility which is evaluative in nature or which, if disclosed, could endanger the life or safety of any person, unless such disclosure is otherwise permitted by law;

(d) attorney's work product or material prepared for litigation before judicial, quasi-judicial or administrative tribunals, as described in subdivisions (c) and (d) of section three thousand one hundred one of the civil practice law and rules, except pursuant to statute, subpoena issued in the course of a criminal action or proceeding, court ordered or grand jury subpoena, search warrant or other court ordered disclosure.

6. PROCEDURE FOR OBTAINING ACCESS TO RECORDS

Requests to inspect originals or copies of records shall be submitted in writing or by email or by the form on the Town's web site to the Records Access Officer on a form prescribed by the Town Clerk, copies of which are available in the office of the Records Access Officer or on the Town's website. All responses to requests may be done by email.

The Town Supervisor shall delegate an office to be the custodian of the payroll records, and shall maintain a record setting forth the name, public office address, title and salary of every officer or employee of the Town of Big Flats.

The Records Access Officer will determine and advise the requester whether the records specified in the request are available for inspection and copying.

With respect to records which are determined to be available, the Records Access Officer will make the records available for inspection or copying either at the Records Access Officer's office or at some other convenient place. Where copies are requested the Records Access Office will make the necessary arrangement for the preparation and certification, if requested, upon tender

of the required fee. No original documents, photos etc. shall be allowed to leave the Town office in the custody of the individual requesting to inspect such.

(a) Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision nine of this policy. A Town shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the Town of Big Flats lacks sufficient staffing or on any other basis if the Town of Big Flats may engage an outside professional service to provide copying, programming or other services required to provide the copy, the costs of which the Town may recover pursuant to subdivision six below.

i. The Town may require a person requesting lists of names and addresses to provide a written certification that such person will not use such lists of names and addresses for solicitation or fund-raising purposes and will not sell, give or otherwise make available such lists of names and addresses to any other person for the purpose of allowing that person to use such lists of names and addresses for solicitation or fund-raising purposes.

ii. If the Town determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the Town shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.

iii. Upon payment of the fee prescribed therefor, the Town shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search.

iv. Nothing in this policy shall be construed to require the Town to prepare any record not possessed or maintained by such Town except the records regarding the name, public office address, title and salary of every officer or employee of the Town and the current list of all records in possession of the Town per section 3 above.

v. When the Town has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so. When doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the Town shall be required to retrieve or extract such record or data electronically. Any programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested by a person or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record.

With respect to records which are determined not to be available or access to is denied, the Records Access Officer will note the reason for unavailability or fully explain the reason for the denial on the request form, date the form and return one copy of the form with additional notice to the requester that the decision may be appealed within thirty (30) days to the Supervisor of the Town of Big Flats.

Requests by mail or email for copies of available records may be addressed to the Records Access Officer, and will be honored upon payment of the required fee, provided the requester and the record of which a copy requested are sufficiently identified to make compliance practicable.

7. APPEALS

Appeals shall be directed to the Supervisor of the Town of Big Flats on forms prescribed by him, copies of which are available at the office of the Records Access Officer.

All appeals shall be delivered to the Records Access Officer within thirty (30) days after the denial from which such appeal is taken.

Appeals will be determined by the Supervisor of the Town of Big Flats or his authorized representative, but in no case by the Records Access Officer.

The Supervisor of the Town of Big Flats shall cause to be sent copies of all appeals upon the receipt of an appeal to:

Committee on Public Access to Records
Department of State
162 Washington Avenue
Albany, New York 12231

The Supervisor of the Town of Big Flats shall inform the appellant and the Committee on Public Access to Records of its determination in writing within ten (10) business days of receipt of an appeal and fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on open government a copy of such appeal when received by the agency and the ensuing determination thereon. Failure by an agency to conform to the provisions of subdivision three of this section shall constitute a denial.

A person denied access to a record in an appeal determination under the provisions above may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of paragraph 5, above, the agency involved shall have the burden of proving that such record falls within the provisions of that paragraph. Failure by an agency to conform to the time procedures set forth in paragraph 6 above of this resolution subdivision shall constitute a denial.

The court in such a proceeding may assess, against such the Town, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed, when:

- i. the Town had no reasonable basis for denying access; or
- ii. the Town failed to respond to a request or appeal within the statutory time.

8. FEES

There shall be no fee charged for the following:

1. Inspection of records.
2. Search for records, or
3. Any certification pursuant to these rules.

There shall be a fee for copies of available records as follows:

Pages not larger than nine (9) inches by fourteen (14) inches in size, twenty-five (\$.25) cents per page.

The fees for other types of copies, records, or transcripts, the actual cost of reproduction, which may include only

1. an amount equal to the hourly salary attributed to the lowest paid Town employee who has the necessary skill required to prepare a copy of the requested record.

2. the actual cost of the storage devices or media provided to the person making the request in complying with such request;

3. the actual cost to the Town of engaging an outside professional service to prepare a copy of a record, but only when an Town's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and

4. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of Town employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an Town employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

9. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

10. Nothing in this Freedom of Information policy shall require the disclosure of the home address or Social Security account number of an officer or employee, former officer or employee, or of a retiree of a public employees' retirement system; nor shall anything in this article require the disclosure of the name or home address or Social Security account number of a beneficiary of a public employees' retirement system or of an applicant for appointment to public employment; provided however, that nothing in this subdivision shall limit or abridge the right of an employee organization, certified or recognized for any collective negotiating unit of an employer pursuant to article fourteen of the civil service law, to obtain the name or home address, but not the Social Security account number, of any officer, employee or retiree of such employer, if such name or home address is otherwise available pursuant to this resolution regarding Freedom of Information.

11. Any person who, with intent to prevent the public inspection of a record pursuant to this article, willfully conceals or destroys any such record shall be guilty of a violation.

12. When records maintained electronically include items of information that would be available under this article, as well as items of information that may be withheld, a Town in designing its information retrieval methods, whenever practicable and reasonable, shall do so in a manner that permits the segregation and retrieval of available items in order to provide maximum public access.

13. PUBLIC NOTICE

The Clerk of the Town of Big Flats shall cause copies of this regulation to be posted on the bulletin boards of the Town Big Flats and the Town of Big Flats Courthouse and release the same to the official newspaper of the Town so that the public is informed how to request access to public records. Town Department Heads shall also cause this regulation to be posted in an obvious spot within each department.

14. EFFECTIVE DATE

This regulation shall take effect immediately upon its adoption.

BE IT FURTHER RESOLVED, that certified copies of this Resolution be forwarded to all Department heads.

