



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Mayor Pro Tem Lesser and Council Member Howorth
Open Government Ad Hoc Committee

THROUGH: Quinn Barrow, City Attorney

FROM: Roxanne Diaz, Esq.

DATE: July 19, 2012

SUBJECT: Discussion and Direction Regarding Public Records Protocol

RECOMMENDATION:

It is recommended that the Open Government Ad Hoc Committee discuss the Public Records Act Protocol and provide comments and/or direction to Staff.

BACKGROUND:

In March 2011, the City Council entered into a settlement agreement with Richard McKee with regard to the lawsuit he filed seeking relief “for alleged violations of the Brown Act and the California Public Records Act.”¹ As part of the settlement agreement, the City agreed to “develop and adopt a protocol for responding to requests for public records which complies with the Public Records Act.”² While the settlement agreement delegated to the City Manager the authority to develop and adopt a Public Records Act protocol, Staff believes it would be appropriate for the Open Government Ad Hoc Committee to provide its input on the protocol prior to implementation.

DISCUSSION:

The California Public Records Act codified at Government Code Section 6250 et. seq., is a California statute that affords the public the right to obtain a copy of and the right to inspect most government records retained by State and local agencies. The fundamental principal is that records of a state or local agency (as defined by the Public Records Act) shall be disclosed to the public upon request, unless there is a legal basis not to do so.

The Public Records Act permits local agencies to adopt regulations stating the procedures to be followed when making their records available to the public. Accordingly, the proposed Public Records Act Protocol (“Protocol”) is a formal written policy affirming the public’s right to access records as well as set forth the procedures by which such records will be made available to the public. The Protocol also describes the process for City Staff to follow when responding to requests for public records. The Protocol is summarized below.

¹ Recital C of the Settlement Agreement and Release dated March 15, 2011

² Section 1(a)(iv) of the Settlement Agreement and Release dated March 15, 2011.

Procedures for Making Public Records Act Requests.

The Protocol provides that requests for public records should be made on a “Request for Public Records Form” (“PRA Form”) and be submitted to the City Clerk’s Office. If a request for public records, however, is not placed on the PRA Form, the City cannot deny the request. The Protocol recognizes that public records requests come in variety of ways such as email, phone requests, fax, letter and in person. In cases where the requestor does not complete the PRA Form, the PRA Form shall be filled out by City Staff. The central reason for the PRA Form is to reduce any misunderstandings between the requestor and City Staff as to what records are sought. The PRA Form also serves as the basis for tracking requests to ensure that Staff responds to records requests in a timely manner and with greater efficiency.

Under the Public Records Act and as reflected in the Protocol, persons making requests should specify the records to be copied or inspected with sufficient detail to allow the city to identify the responsive public records. If City Staff determines that the request is unfocused or not clear, it is the role of the Staff to make a reasonable effort to obtain information from the requestor to clarify the request or otherwise assist the requestor in identifying records that may be responsive to a request. This is more fully discussed in Section IV.C. of the Protocol.

Last, the Protocol recognizes that the public has the right to not only request a copy of a public record, but that the public may also request to “inspect” a public record. Accordingly, the Protocol provides that public records are open to inspection during regular City business hours. The City, however, does not maintain a centralized system for all City records. Therefore the Protocol provides that requests for inspection of specifically identified and readily available public records should be handled as soon as possible, ideally on the day they are requested. However, some requests may require the City to locate, review and assemble records before fulfilling the request. Therefore in such cases it is likely that inspection will not be contemporaneous with the request.

Procedures for Processing Public Records Act Requests.

The Protocol centralizes the processing and handling of public records requests in the Office of the City Clerk. Under the Protocol, the City Clerk’s office is responsible for accepting public records requests as well as transmitting responses and responsive public records to persons making a request. The Public Records Act provides that a local agency has 10 calendar days from receipt of the public records request to notify the requestor “whether the request, in whole or in part, seeks copies of discloseable public records in the possession of the [city]. . . .” Accordingly, the Protocol provides that the process for handling records requests shall be implemented within the ten days after receipt of a request. The process is summarized below:

1. Upon receipt of a public records request, the City Clerk’s Office enters the request into the “Public Records Act Request Log.”
2. The City Clerk’s Office forwards the request to the appropriate City department for processing.
3. The designated department employee(s) reviews the request and its files to determine whether the department has the requested public records in its possession.

4. If the department determines it has responsive public records, the department is required to contact the City Clerk to provide an estimated amount of time needed to prepare the records and an estimate of the copying charges if possible.
5. If the department determines that it does not maintain any responsive records, the department must immediately notify the city clerk.
6. After receipt of the information from the department, the City Clerk responds to the requestor by advising the requestor in writing whether the request, in whole or in part, seeks copies of discloseable public records in the possession of the City. The City Clerk shall also provide an estimated date as to when the records will be made available and the estimated copying charges, if available.

Although the Act prescribes the time for responding to a records request, the law does not provide a specific time-frame in which a local agency is required to disclose the records. The Act provides that copies of records must be provided “promptly.” That said, the Protocol requires the department to provide the City Clerk with the estimated amount of time needed by the department to prepare the records (i.e. search for, gather, review and copy the records). The expectation is that the department will forward the responsive records to the City Clerk within this time-frame so that the City Clerk can make those records available to the requestor upon the payment of the fees to cover the costs of duplication.

If a request for public records is denied in whole or in part, the requestor must be notified in writing.

CONCLUSION:

In conclusion, it is recommended that the Open Government Ad Hoc Committee discuss the Public Records Act Protocol and provide comments and/or direction to Staff

Attachments: A. Public Records Act Protocol
B. Public Records Request Log

CITY OF MANHATTAN BEACH
PUBLIC RECORDS ACT PROTOCOL

I. INTRODUCTION/PURPOSE

The California Public Records Act (“Act”) is the State law that establishes and guides the public’s right to access records concerning the conduct of the people’s business. The purpose of this protocol (known as the “Public Records Act Protocol”) is to affirm in writing the public’s right to access City Public Records and to set forth the procedures by which such Public Records will be made available to the public in accordance with the Act. City Staff receives requests for Public Records frequently. Responding promptly and appropriately to public records requests is an important aspect of the City’s open government process.

II. GENERAL RESPONSIBILITIES

The City Clerk’s Office shall be responsible for accepting Public Records requests from members of the public and transmitting responsive records to the person making a Public Records request. Each department shall be responsible for providing the City Clerk with Public Records under the Department’s control.

III. DEFINITIONS

- A. City Clerk shall mean the City Clerk of the City of Manhattan Beach or her designee.
- B. Public Records includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by the City of Manhattan Beach regardless of physical form and characteristics.
- C. Writing means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and any record thereby created, regardless of the manner in which the record has been stored.

IV. PROCEDURES FOR MAKING PUBLIC RECORDS ACT REQUESTS

- A. Public Records Act requests can come in different forms: (i) letter requests; (ii) email requests; (iii) fax requests; (iv) phone requests; and (v) requests made in person.

- B. Requests to be Submitted to the City Clerk's Office. Requests for Public Records should be made on the Request for Public Records Form ("Form") and should be submitted to the City Clerk's Office. Written requests reduce any misunderstandings between the requestor and City Staff, which allows City Staff to respond to records requests in a timely manner and with greater efficiency. However, the City will not deny a request for Public Records solely because it is not submitted in writing.
1. If the Form is not completed by the person making the request, the Form should be prepared by City Staff and if applicable, City Staff should attach the letter, email, or other writing prepared by the requestor. If a request is received by phone or made in person and the person making the request is unable or unwilling to complete the Form, the Form should be prepared by City Staff. A notation should be made on the Form stating the manner by which the request was received.
 2. Requests for inspection and/or copies of specifically identified and readily available Public Records such as limited sections of City regulatory documents, specific sections of the Zoning Code, and specifically identified resolutions, do not require completion of the Form, and such requests should be handled as soon as possible and copies provided expeditiously, ideally on the day they are requested.
 3. If City Staff must search and examine files or collect records from a variety of departments, or the request requires research as to the existence of the requested Public Records and/or their location, a Form should be completed.
- C. Requests Should Identify the Public Records. The person making the request should, in writing, specify the Public Records to be inspected/copied with sufficient detail to enable the City to identify the particular Public Records. If the request seems ambiguous or unfocused, City staff should make a reasonable effort to obtain additional clarifying information from the requestor that will help identify the Public Record(s). Pursuant to Government Code Section 6253.1, City staff shall do all of the following, to the extent reasonable under the circumstances:
1. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
 2. Describe the information technology and physical location in which the records exist.

3. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.
- D. Right to Inspect Public Records. Public Records are open to inspection at all times during regular City business hours. The Public Records Act provides that every person has a right to inspect any public record, except as otherwise provided in the Act. Upon receipt of a written or oral request for inspection of Public Records, the City shall make the records promptly available to the requestor. However, the City does not maintain a centralized system for all City records. Therefore, some requests to inspect records may require that the City locate, review and assemble records before fulfilling the request.
 - E. Any department that receives a request for a copy of Public Records shall time stamp the request and promptly forward the request to the City Clerk's Office.

V. PROCEDURES FOR HANDLING PUBLIC RECORDS ACT REQUESTS.

The City Clerk, upon a request to inspect or obtain a copy of Public Records, shall, within ten (10) days, determine whether the request, in whole or in part, seeks disclosable Public Records in the possession of the City. The ten (10) day time period shall be calculated from the date the request is received during regular City Hall business hours. The following procedures shall be followed within the ten days after receipt of a request.

- A. Upon receipt of a request, the Clerk's Office shall immediately enter the request into the "Public Records Act Request Log" maintained by the City Clerk's Office. The City Clerk shall then forward the request to the appropriate Department Head or department designee.
- B. Upon receipt of the Public Records request by the Department Head or designee, the department shall promptly begin reviewing the request and department files to determine if the department has the requested Public Records in its possession. The Department Head or designee may note his or her calendar with the last date to respond to the request as required under Government 6253(c). The department shall contact the City Clerk to provide an estimated amount of time needed to prepare the records (i.e. search for, gather, review and copy the records), and an estimate as to the duplication charges (if possible). If the request seeks a voluminous amount of Public Records, the department shall contact the City Clerk's office prior to preparing the records. If the department has determined that it does not maintain any Public Records responsive to the request, the department shall immediately notify the City Clerk.
- C. Upon receipt of the information from the department, the City Clerk shall respond to the person requesting Public Records by advising the

requestor in writing as to whether the request, in whole or in part, seeks copies of disclosable Public Records in the possession of the City, and if so, the estimated date and time when the records will be made available and the estimated duplication charge (if available). This determination shall be communicated to the requestor within the 10 day time period. The City is required to make the Public Records promptly available to any person upon payment of fees covering the direct costs of duplication, or a statutory fee if applicable.

- D. Requests that are related to pending or potential litigation shall be coordinated with the City Attorney's office. Questions regarding the Public Records Act or regarding whether or not any Public Record is subject to disclosure shall promptly be forwarded to the City Attorney's Office for review.
- E. In unusual circumstances, the 10 day period for determining whether the request, in whole or in part, seeks copies of disclosable Public Records in the possession of the City, may be extended by written notice from the City Clerk or City Attorney to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be made in the manner set forth in Government Code Section 6253. No notice shall specify a date that would result in an extension for more than 14 days. The written determination shall include the estimated date and time when the Public Records shall be made available.
- F. If a request for Public Records seeks the production of records or documents that are not in existence at the time the request is made, the City is not obligated to create a document in order to respond to the request.
- G. A determination that a Public Record is exempt from disclosure under the Public Records Act shall be made in consultation with the City Attorney's office.

VI. TRANSMITTAL OF RECORDS

- A. Unless otherwise directed by the City Clerk, the department shall forward the Public Records and the final cost of duplication to the City Clerk within the time period estimated by the department.
- B. The City Clerk's office shall then make the Public Records available to the requestor upon payment of fees covering the direct costs of duplication or a statutory fee, if applicable.

VII. GENERAL

- A. Each Department shall designate a person or persons, who will be responsible for responding to Public Records Act requests and coordinating the response with other City Departments, when appropriate.
- B. If a request for Public Records is denied in whole or in part, the denial shall be in writing and shall contain the names and titles or positions of each person responsible for the denial as required by Government Code Section 6253(d) and 6255(b).
- C. Nothing in this Public Records Act Protocol shall be construed to permit the City to delay or obstruct the inspection or copying of Public Records, nor shall the Public Records Act Protocol be construed as limiting the City's rights under the Public Records Act and applicable case law.

- VIII. ATTACHMENT: Public Records Request Transmittal Form
 Sample of Public Records Act Request Log

APPROVED:

City Manager

