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To:	Shari Winstead; Keith Scully; Doris McConnell; Will Hall; Chris Roberts; Jesse Salomon; Keith McGlashan
Cc:	Jessica Simulcik Smith; Debbie Tarry
Subject:	Proposed Ordinance 742 - Public Records Policy
Date:	Monday, April 04, 2016 6:53:28 PM

Council Members:

Public records in our state are sacred documents. The Public Records Act declares:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. ... RCW 42.56.030.

The Act further provides:

> Courts shall take into account the policy of [the Act] that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. RCW 42.56.550(3).

In a decision last month by the Washington Supreme Court, the Court said this about the the Public Records Act (PRA):

> The PRA is a strongly worded mandate for disclosure of public records. The purpose of the act is "nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions." [citations omitted] To effectuate the PRA's purpose, the legislature declared that the PRA "shall be liberally construed and its exemptions narrowly construed." RCW 42.56.030. The language of the PRA must be interpreted in a manner that furthers the PRA's goal of ensuring that the public remains informed so that it may maintain control over its government. [citations omitted]

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For at least the following reasons, Proposed Ordinance 742 should not be adopted in its current form.

1. The City's rules relating to public records are currently contained in Shoreline's Municipal Code. Given the importance of these rules to the public, the rules should continue to be

housed only in Shoreline's Municipal Code. Council should resist any attempt to shift to the City Manager the responsibility and authority to adopt the City's public records policy and rules. The Council should adopt the City's policy and rules, not the City Manager. State law regarding public records has rarely changed. When the law does change, Council can take action to amend the SMC if needed.

Proposed City Manager Policy 1.4 illustrates why the Council should never let the City Manager set the City's public records policy. Proposed City Manager Policy 1.4 provides:

> Disclaimer of Liability. Except where these guidelines reflect a statutory mandate, the guidelines in this policy are discretionary and advisory only and shall not impose any affirmative duty on the City. The City reserves the right to apply and interpret this Policy as it sees fit, and to revise or change the Policy at any time. Failure to comply with any provision of this Policy shall not result in any liability imposed upon the City other than that required in the Act.

This reckless, "blank check" language is not in the public's best interest. The text,"the guidelines in this policy are discretionary and advisory only and shall not impose any affirmative duty on the City. The City reserves the right to apply and interpret this Policy as it sees fit, and to revise or change the Policy at any time," lets the City Manager make any policy changes that the City Manager wants to make, at any time, without the City Council's involvement.

The City Council, not the City Manager, must be the body that sets the important policy and rules regarding public records. We elect the City Council to do this, not the City Manager.

2. RCW 42.56.100 provides that rules and regulations regarding public records "shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information." And WAC 44-14-01002 provides that, therefore, "an agency must adopt "reasonable" regulations providing for the "fullest assistance" to requestors and the "most timely possible action on requests."

— Proposed Ordinance 742 fails to adhere to the mandate in WAC 44-14-01002 when it amends SMC 2.35.010, saying that any public records rules that the City Manager may adopt shall provide for "fullest assistance and most timely response." This watered-down timing language does not conform to State law. To conform to State law, this language needs to be revised to say that the City shall provide the "fullest assistance to requestors and the most timely possible action on requests."

— Proposed Ordinance 742 fails again to adhere to the mandate in WAC 44-14-01002 when it amends SMC 2.35.020, saying that any public records Policy that the City Manager may adopt shall provide for "fullest assistance to requestors and timely action." This watered-down timing language does not conform to State law. To conform to State law, this language needs to be revised to say that the City shall provide the "fullest assistance to requestors and the most timely possible action on requests."

— Proposed City Manager Policy 1.3 fails to adhere to the mandate in WAC 44-14-01002, saying that the City will provide the public full access to public records with "fullest

assistance and most timely response." This watered-down timing language does not conform to State law. To conform to State law, this language needs to be revised to say that the City shall provide the "fullest assistance to requestors and the most timely possible action on requests." (But see above regarding my objection to letting the City manager set the policy and rules for public records disclosure.)

3. Proposed City Manager Policy 1.4 provides that, "When a requestor uses the phrase "all records relating to", the PRO/designee will interpret the request to be for records which directly and fairly address the topic, and not for all the records that contain the topic." Not only is this language ambiguous, but it contains the wrong presumption — it is contrary to the public's best interest. When the phrase "all records relating to" is used, then the presumption should be that all public records that contain or address the topic should be provided. If the PRO/designee has concerns about the breath of the request, and that the request may require the furnishing of records that the requestor is not seeking, then the PRO/designee should contact the requestor, working with the requestor to narrow the request if appropriate. Note that this revision will also help insulate the City from liability should a requestor who seeks all records related to a certain topic be denied any records that the requestor would have expected to receive. (See above regarding my objection to letting the City manager set the policy and rules for public records disclosure.)

4. The Staff Report says that, "the Clerk's Office has explored is implementing a time limitation on the amount of resources the City devotes to public disclosure," then concludes that "at this time, staff does not feel it is necessary to implement a limit to public disclosure resources." Please be advised that with a City the size of Shoreline, it is not excessive if the City Clerk's office has to spend 136 hours per month or even substantially more hours to process public records requests. As the Washington Supreme Court has said, "The PRA is a strongly worded mandate for disclosure of public records." I believe that it is appropriate for the City Clerk's office to employ at least one FTE staff dedicated solely to the processing of public records requests. The Staff Report speaks of "a recommendation during the 2017 process for continued funding of the half-time Public Disclosure Specialist position, or a recommendation to amend the Public Records Policy to include a limit on public disclosure resources." I support funding of a full-time Public Disclosure Specialist position, not merely a half-time position.

Thank you.

Tom McCormick