

Resolution #380-2013

RULES AND REGULATIONS GOVERNING PUBLIC ACCESS TO RECORDS OF THE TOWN OF TICONDEROGA IN ACCORDANCE WITH ARTICLE 6 OF THE PUBLIC OFFICERS LAW OF NEW YORK STATE

Pursuant to Article 6 of the New York State Public Officers Law, the following rules and regulations are hereby adopted governing public access to records of the Town of Ticonderoga (“Town”).

Section 1. Purpose.

The New York State Legislature has determined that the people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society and, therefore, has declared that government is the public’s business and that the public, individually and collectively and represented by free press, should have access to the records of government in accordance with the provisions of Article 6 of the Public Officers Law (“POL”). Therefore, the purpose of this regulation is to set forth the rules and regulations governing the availability, location and nature of those records of the Town pursuant to the provisions of Article 6 of the Public Officers Law, known as the Freedom of Information Law.

Section 2. Definitions.

For purposes of these rules and regulations:

(a) The term **record** means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, 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.

(b) The term **business day** means any day except Saturday, Sunday, or a public holiday.

Section 3. Procedures for Obtaining, Maintaining and Retrieving Records.

(a) Any person who wishes to inspect or obtain a copy of any record may request access to the record by making application to the Town Clerk. Such application shall be in writing and shall reasonably describe the record(s) sought. Whenever possible a person requesting records shall supply information that may help to describe the record(s) sought.

Application forms which comply with law may be obtained from the Town Clerk either personally or on any business day at the office of the Town Clerk located at 132 Montcalm Street, Ticonderoga, New York, or by mail (or fax (518.585.7211)) addressed to such office.

(b) Requests for access to records may be submitted to the office either personally, on any business day between the hours of 9:00 a.m. and 4:00 p.m., or by mail (or fax) addressed to such office. Within five (5) business days of the receipt of a request for a record reasonably described, the Town Clerk shall search for the requested record and take one of the following courses of action:

1. Make the record available (and, if requested, make a copy of the record and collect the appropriate fee and/or certify the record); or
2. Deny the request in writing; or
3. Furnish a written acknowledgment of the receipt of the request and provide a statement of the approximate date, which shall be reasonable under the circumstances, 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 5 of Section 89 of the POL.

(c) If the Town determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record(s), within twenty (20) business days from the date of the acknowledgement of the receipt of the request, the Town shall state, in writing:

1. The reason for the inability to grant the request within twenty (20) business days; and
2. A date certain, within a reasonable period depending on the circumstances, when the request will be granted in whole or in part.

Section 4. Subject Matter List.

The Town Clerk shall maintain and make available for inspection and copying:

- (a) A record of the final vote of each member in every proceeding in which the member votes;
- (b) A record setting forth the name, public office address, title and salary of every officer or employee of the Town; and
- (c) A reasonably detailed current list by subject matter, of all records in the possession of the Town whether or not available under Article 6 of the POL.

Section 5. Fees.

(a) The fees for copies of records shall not exceed twenty-five cents (\$0.25) per copy

not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, including electronic records, in accordance with the provisions of Section 5(b) herein, except when a different fee is otherwise prescribed by law.

(b) In determining the actual cost of reproducing a record, the Town may include:

- i. 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. The current hourly salary applicable to this section is \$10.00 per hour;
- ii. the actual cost of storage devices or media provided to the person making the request in complying with such request;
- iii. the actual cost to the Town of engaging an outside professional service to prepare a copy of a record, but only when the Town's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and

(c) Preparing a copy in accordance with Section 5(b) herein shall not include search time or administrative costs, and no fee shall be charged unless at least two (2) hours of a Town employee's time is needed to prepare a copy of the record requested. In addition, a person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two (2) hours of a Town employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

Section 6. Prevention of Invasion of Privacy.

In accordance with the provisions of Section 89 of the POL and in conformity with such advisory guidelines as may be promulgated by the Department of State Committee on Open Government regarding the prevention of unwarranted invasions of personal privacy, the Town Clerk may delete (or cause to be deleted) from any record identifying details, the disclosure of which would result in an unwarranted invasion of personal privacy, prior to making such record available for inspection and/or copying. In the event that one or more deletions are made from any record, the Town Clerk shall provide written notice of that fact to the person given access to the record.

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

1. Disclosure of employment, medical or credit histories or personal references of applicants for employment;
2. Disclosure of items involving the medical or personal records of a client

or patient in a medical facility;

3. Sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
4. 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 and not relevant to its ordinary work; or
5. Information of a personal nature contained in a workers' compensation record, except as provided by section 110(a) of the Workers' Compensation Law.

(b) Unless otherwise provided by Article 6, Section 89 of the POL, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy:

1. When identifying details are deleted;
2. When the person to whom a record pertains consents in writing to disclosure;
3. When upon presenting reasonable proof of identity a person seeks access to records pertaining to him or her; or
4. 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.

Section 7. Grant or Denial of Access to Records.

The Town Clerk, in accordance with these rules and regulations and the provisions of Section 89 of Article 6 of the POL as it may be amended from time to time (a copy of the current version is attached at the date of the adoption of this policy), shall make available for public inspection and copying all records, except that the Town 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 Subdivision 2 of Section 89 of the POL;
- (c) If disclosed would impair present or imminent contract awards or collective

bargaining negotiations;

(d) Are trade secrets or are submitted to the Town by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) Are compiled for law enforcement purposes and which, if disclosed, would:

1. Interfere with law enforcement investigations or judicial proceedings;
2. Deprive a person of a right to a fair trial or impartial adjudication;
3. Identify a confidential source or disclose confidential information relating to a criminal investigation; or
4. Reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) If disclosed could endanger the life or safety of any person;

(g) Are inter-agency or intra-agency materials which are not:

1. Statistical or factual tabulations or data;
2. Instructions to staff that affect the public;
3. Final agency policy or determinations; or
4. External audits, including but not limited to audits performed by the comptroller and the federal government; or

(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 or an entity that has

shared information with the Town to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or

Section 8. Appeals and Violations.

(a) Any person denied access to a record may, within thirty (30) days, appeal to the

Town Supervisor, with a copy to the Town's Legal Counsel, except as provided in Subdivision 5 of Section 89 of the POL. Such appeal shall be in writing and must set forth: the name and address of the applicant; the specific record(s) requested; the date of the denial; and the reasons given for such denial. The Town Supervisor shall, within ten (10) business days of the receipt of such appeal, fully explain in writing to the person requesting the record the reasons for further denial or provide access to the record sought.

(b) Upon receipt of an appeal, the Supervisor shall immediately forward a copy to the Department of State Committee on Open Government and the ensuing determination thereon.

(c) Failure by the Town to conform to the provisions of Subdivision 3 of Section 89 or Paragraph (a) of Subdivision 4 of Section 89 of the POL shall constitute a denial.

(c) Except as provided in Subdivision 5 of Section 89 of the POL, a person denied access to a record in an appeal determination under the provisions of Paragraph (a) of Subdivision 4 of Section 89 of the POL may bring a proceeding for review of such denial pursuant to Article 78 of the Civil Practice Law and Rules. In the event that access to any record is denied pursuant to the provisions of Subdivision 2 of Section 87 of the POL, the Town shall have the burden of proving that such record falls within the provisions of said Subdivision.

(d) The court in such a proceeding may assess, against the Town, reasonable

attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of Section 89 of the POL in which such person has substantially prevailed, when:

1. The Town had no reasonable basis for denying access; or
2. The Town failed to respond to a request or appeal within the statutory time.

Section 9. Effective Date.

The foregoing rules and regulations shall take effect immediately.

Dated: October 18, 2013