

ORDINANCE NUMBER 3179**AN ORDINANCE ESTABLISHING A PUBLIC RECORD POLICY FOR
THE CITY OF VESTAVIA HILLS, ALABAMA**

WHEREAS, the Alabama Open Records Act (“ORA”) at §36-12-40, *Code of Alabama, 1975*, states that every citizen has a right to inspect and take a copy of any public writing, except for (1) registration and circulation records and information concerning the use of public libraries (except for a parent inspecting the records of his or her child); (2) records concerning security plans, procedures, assessments, measures or systems, and any other records relating to or having an impact upon the security or safety of persons, structures, facilities or other infrastructures including critical infrastructure and critical energy infrastructure, whose disclosure could reasonably be detrimental to public safety and welfare and the best interests of the public; and (3) as otherwise expressly provided by statute; and

WHEREAS, §36-12-41, *Code of Alabama, 1975*, states that every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give said citizen, on demand, a certified copy of it, on payment of the legal fees therefor; and

WHEREAS, ORA does not define the terms “public writing” or “public records”; and

WHEREAS, the Alabama Legislature in §41-13-1, *Code of Alabama, 1975*, defines a public record to include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and any record authorized to be made by any state law belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer; and

WHEREAS, The Supreme Court of Alabama decided the case of *Stone v. Consolidated Publishing Company*, 404 So.2d 678, in 1981 and defined the term “public writing” when it wrote,

“We have carefully considered the issue raised by appellants on this appeal, particularly with reference to our statutes. Construing these statutes *in pari materia*, we hold that the ‘public writing’ spoken of in Code 1975, §36-12-40, is such a record as is *reasonably necessary* to record the business and activities required to be done or carried on by a public officer so that the status and

condition of such business and activities can be known by our citizens.”; and

WHEREAS, the Alabama Supreme Court decided the case of *Allen v. Barksdale*, 32 So.3d 1264, in 2009 and wrote, “We doubt the Legislature intended to make a distinction between a ‘public writing’ and a ‘public record’”; and

WHEREAS, the Supreme Court of Alabama decided the case of *Stone v. Consolidated Publishing Company*, 404 So.2d 678, in 1981 and held that recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure; and

WHEREAS, not all documents received by a public official are “public writings” subject to inspection and copying by citizens under ORA. The Supreme Court of Alabama also wrote in the case of *Stone v. Consolidated Publishing Co., supra*, that,

“This is not to say, however, that any time a public official keeps a record, though not required by law, it falls within the purview of §36-12-40.”; and

WHEREAS, the Alabama Supreme Court in the case of *Blankenship, et al v. City of Hoover, et al*, 590 So.2d 245 (Ala.1991), held that a custodian of public records may require the person seeking access to show that he or she has a direct, legitimate interest in the document or information sought, for there is no right of inspection when it is sought to satisfy a whim or to create scandal or for any other improper or useless purpose, and no right to demand to see public records without showing why he or she is interested; and

WHEREAS, a municipality may set reasonable restrictions on the time and place of inspection and may charge a reasonable fee for providing requested public documents, including City staff research, preparation and time in fulfilling the request; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to establish a policy and procedure for the City of Vestavia Hills, Alabama for a citizen to request to inspect and/or copy public records and for the City to respond to that request.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, THAT THE FOLLOWING IS ADOPTED AS THE “CITY OF VESTAVIA HILLS' PUBLIC RECORD POLICY”:

Section 1. Statement of Policy.

The City of Vestavia Hills recognizes and supports the public's right to inspect and make copies of public records in accordance with Alabama law. Public records are available for public inspection and copying on a reasonable basis, subject to the policy and procedure set forth in this Ordinance. All responses to requests concerning public records will be made in such a way that will not interfere with the normal operation of the City or the job duties of the employee.

Section 2. Confidential Records.

Municipal records fall into different categories, most of which are available to the public. Some records or portions of records are determined to be confidential and not subject to public disclosure, including, but not limited to, the following:

1. Any specific exception found in the above cited sections of *Code of Alabama, 1975*, as amended; and
2. All confidential written materials submitted to or from any officer or employee and an attorney for the City; and
3. Plans, evaluations or studies relating to safety and security of municipal employees and facilities; and
4. Certain personnel records relating to city employees, including W-2 forms (employees have the right to be notified of requests to access information contained in their personnel file); and
5. Medical records and other personal health information pertaining to employees, unless authorized by the employee; and
6. Test materials given to applicants for employment or promotion with the city, including the results of any such test; and
7. Certain personal identifying information, such as home address, telephone number, closest living relative information, social security number, taxpayer identification number, etc.; and
8. Information regarding gross receipts or tax payments of licensed businesses; and
9. Internal audit work papers and internal audit reports, including system security information; and
10. All court documents pertaining to the execution of warrants; and
11. Electronic data including phone call data, cellular call data, text, email, and or any other messenger or messenger device sent or received by City employees, elected officials, etc., which technologically cannot be produced; and
12. Any information concerning pending court cases; and

13. Any information submitted to or received from the NCIC/ACJIC facilities; and
14. Emergency medical reports prepared by the fire department, unless authorized by the victims or pursuant to court process; and
15. Records pertaining to ongoing fire investigations; and
16. Fire inspection reports may be given to owner or occupant of the premises, if authorized by the property owner; and
17. Records pertaining to confidential investigations of the police department, including but not limited to criminal investigations and internal affairs investigations; and
18. Confidential informant files; and
19. Crime scene information including photographs, videos, physical evidence and such other similar materials; and
20. Any digital data produced by the Vestavia Hills Police department, including, but not limited to any video or audio recording produced from a police department vehicle, body-worn camera, audio recorder or building-based recording depicting the police department, jail or City Hall or grounds, except as required by Alabama law.*

If there is uncertainty as to the confidential status of a record, the matter shall be referred to the city legal counsel for guidance and advice.

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*Footnote Citation:

Alabama Supreme Court Case entitled *Something Extra Publishing v Huey Hoss Mack, Anthony Lowery and Michael Gaull, Special Term, 2021* and §36-12-40, 12-15-134, , 32-10-11, 32-10-8, 32-10-7, 41-13-6, 41-13-1, *Code of Alabama, 1975*.

Section 3. Submission of Requests.

All persons requesting to view or obtain copies of public records shall be referred to the Office of the City Clerk, subject to the exceptions listed below. The City Clerk's office will provide an application form and/or receive completed written requests.

Exceptions:

1. The plotter of the City's GIS department may provide copies of maps and other large format documents, with set fees according to the size and type of paper, number of copies, etc.; and
2. The municipal court office may provide information regarding court records to individuals and other courts; and
3. The police department records office may provide copies of certain reports, which are subject to the fees set by the respective department in the day-to-day operations such as routine dissemination of incident, offense or accident reports to victims, reporting persons or involved parties; and
4. The fire department may provide copies of certain reports, which are subject to fees set by the respective department, in the day-to-day operations such as routine dissemination of incident, inspection reports, etc., and
5. This ordinance does not restrict the police department records office from producing routine law enforcement documentation pursuant to lawful subpoena; and
6. Information or records may be provided for auditing purposes, other governmental entities, or the news media at no cost.

Section 4. Processing of Requests.

Completed Request for Access to Public Records form, once submitted to the City Clerk, shall be processed as soon as practical and within a reasonable time as follows:

1. The City Clerk shall review the request for informational purposes to determine if the records request is complete and specific; and
2. The City Clerk shall notify the appropriate department with specifics of the request and determine from the appropriate the estimated time needed to provide said records and the time needed in order to produce said records; and
3. The Department Head of the appropriate Department shall notify the City Clerk of the cost of production of said records, the production format and the estimated turn around for production; and
4. The City Clerk shall notify the requester the estimated cost and time for production of records or whether or not the request has been deemed to be records either exempt of beyond the records disposition schedule and cannot be produced; and
5. When the records are submitted and ready for review or purchase, the City Clerk shall notify the requester and request payment for pickup and/or review of said records; and
6. If the requested document is not a "public record" within the meaning of this ordinance, then the document shall not be produced for inspection and copying, and the City Clerk shall so advise the citizen who made the request; and

7. Should the requested document be an exception to the ORA under Alabama law, then in such event the requested document shall not be produced for inspection or copying, and the City Clerk shall so advise the citizen who made the request.

Section 5. Requests to view specific records or documents.

1. Anyone desiring to review specific files or records located in the City Clerk's office may do so by appointment during normal business hours.
2. When requests to review specific files or records not located in the City Clerk's office are received, the Clerk's office will contact the other office(s) to make the necessary arrangements. The applicant will then be notified of the time when and location where the records may be viewed.
3. Requests to obtain copies of specific records or documents (no research, preparation or compilation required):
 - a. For records located in the Clerk's office, the applicant may receive immediate information concerning the cost and estimated time to provide said copies.
 - b. For records not located in the Clerk's office, additional time may be necessary to obtain information concerning the cost and estimated time to provide said copies.
 - c. The cost shall be determined at the time of submission based upon the cost per page to the City.
 - d. Cost for requests that require minimal time and resources may be waived by the City Clerk

Section 6. Requests to view or obtain copies of records that are not specific in nature and/or require compilation of data.

Response to requests of this nature may require additional time, since research may be necessary to locate the records, review their status, or determine the complexity of the request. Charges for time may be necessary for records that are bound, require removal of staples, etc., or require editing to maintain the confidential status of portions of the material. The feasibility of providing access to records that are not of a standard size or format or are voluminous in nature must be determined.

Section 7. Calculation of Costs/Payments.

No charges will be assessed for research that is necessary to evaluate and determine feasibility of the request. Applicant will be given an estimate of the time and cost involved in providing the requested records or information. Applicant will be required to pay the estimated amount before the actual work or research is performed. The actual cost will be determined upon completion, and adjustments to the payment will be made if necessary. There the cost will be

calculated at the pay rate per hour of the employee who is performing said research in order to reimburse the City of said expense for needed research and/or copying of said records and the cost of production of the record itself (cost of copy, thumb drive, etc.) or portion thereof.

Section 8. Exemptions:

1. The Vestavia Hills Library in the Forest has a public records policy as adopted and amended by the Vestavia Hills Library Board. Any request to the Library in the Forest shall be exempt from this Ordinance and shall be handled solely under the Library's adopted policy, as amended; and
2. This Ordinance shall not prevent any City department from producing daily reports in the normal course of business at fees set by said department; and
3. Any production of records pursuant to a legal subpoena issued by a court of competent jurisdiction and served upon the City shall be exempt from the requirement of any payment as set forth in this Ordinance.

Section 9. Severability:

If any part, section, or provision of this Ordinance shall hereafter be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity or any other section or provisions of this Ordinance, which shall continue in full force and effect notwithstanding such holding; and

Section 10. Repealer:

All Ordinances or part of Ordinances, in any manner, conflicting herewith are hereby repealed; and

Section 11. Effective Date:


This Ordinance Number 3179 shall become effective immediately following publishing and/or posting in accordance with Alabama law.

ADOPTED and APPROVED this the 22nd day of May, 2023.



Ashley C. Curry
Mayor

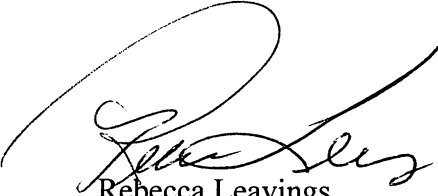
ATTESTED BY:


Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, hereby certify that the above and foregoing copy of one Ordinance Number 3179 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 22nd day of May, 2023, as same appears in the official records of the City.

Posted at the Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills New Merkel House and the Vestavia Hills Recreation Center on this the 23rd day of May, 2023


Rebecca Leavings
City Clerk