

Introduced by:	Mayor, Johnson
Date:	03/19/24
Hearing:	04/16/24
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2024-06**

**AMENDING KPB CHAPTER 2.54 RELATING TO ACCESS TO PUBLIC RECORDS
AND RESPONSE TO RECORD REQUESTS**

WHEREAS, the majority of the provisions of KPB Chapter 2.54, relating to public records, have not been updated since enactment in 1986; and

WHEREAS, during FY22, the KPB transitioned to an online, centralized public records request system; and

WHEREAS, these code amendments continue to reflect a policy of disclosure of public records, while at the same time balancing privacy rights, confidentiality, applicable exemptions, and the need to respond to requests in the orderly course of business; and

WHEREAS, pursuant to AS 40.25.110, AS 40.25.122, KPB 2.54.040, KPB 2.54.050 and KPB 2.54.070, relating to litigation exceptions and mandatory requirements under state law to charge a requestor if personnel time spent responding to a requestor exceeds five person-hours in a calendar month, it is reasonable to require requests be in writing and provide the legal name of the requestor; and

WHEREAS, these amendments clarify provisions relating to record request process, costs, and denial appeals;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB Chapter 2.54. – Access to Public Records, is hereby amended to read as follows:

CHAPTER 2.54. ACCESS TO PUBLIC RECORDS

2.54.010. Kenai Peninsula Borough policy.

It is the policy of the Kenai Peninsula Borough to provide reasonable and prompt public access to [NON-EXCEPTED OR NONCONFIDENTIAL] public records. The assembly recognizes the competing interests of personal privacy and the right of the public to have access to information concerning the conduct of the people's business and the borough will at all times endeavor to appropriately balance those interests in responding to record requests made pursuant to this chapter. This chapter [SHALL]will be construed to require disclosure of all public records in the possession or control of the borough except those specifically exempted under [SECTION]KPB 2.54.040 [OF THIS CHAPTER].

2.54.020. Definitions.

For purposes of this chapter:

"Borough clerk" includes any designee of the borough clerk.

"Borough attorney" includes any designee of the borough attorney.

"Critical infrastructure" means public buildings, telecommunications centers and computers systems, information systems, dams, bridges, road systems, ports, and similar key resources, and systems related to utility services (whether public or private), including water, sewer, fuel supply, energy, hazardous liquid, natural gas, or coal, whether physical or virtual, so vital to the borough that the incapacity or destruction of these systems would have a debilitating impact on security, economic security, public health or safety, or any combination of those matters.

"Record" means any existing recorded information as defined in KPB [SECTION] 2.52.020, and developed or received under law or in connection with the transaction of official business by the borough.

"Record request" includes a request to copy, inspect, produce, or view a record and includes a request to provide a record in electronic format.

"Mayor" is as defined in KPB 1.08.040 and includes any designee of the mayor.

2.54.025. Centralized public record request system

All record requests must be made in writing on a form provided by the borough clerk or through the borough's online record request platform. All requests will be routed through the borough's centralized record request system administered by the borough clerk. A record subject to a court order or court issued subpoena is not a public record and, at the discretion of the borough clerk this section need not be applied to a record subject to a court order or court issued subpoena.

2.54.030. Information available to the public.

[EXCEPT AS PROVIDED BY SECTION 2.54.040] Subject to the provisions of this chapter, or [BY] other provisions of borough ordinance, state or federal law, and subject to reasonable rules regulating the time, place and manner of inspection which may be adopted, all public records [SHALL BE] are open to inspection by the public during regular [BOROUGH BUSINESS] office hours [, SUBJECT TO THE PROVISIONS OF THIS CHAPTER]. In order to determine if a record is confidential, privileged, exempt from disclosure, litigation status pursuant to KPB 2.54.050, and to respond to the request pursuant to KPB 2.54.060, all record requests must be on a form prescribed by the borough clerk, adequately describe the record sought with reasonable certainty, and identify the requestor using the requestor's legal name. A view-only request, or inspection request, must be made by appointment through the clerk's office and will be subject to employee time fees as set forth in KPB 2.54.070.

2.54.040. Exemption for particular records.

This chapter shall not be construed to require disclosure of:

- A. Communications between any borough department board, assembly or commission and the borough attorney's office concerning pending or actual litigation;
- B. Files maintained by the borough attorney's office concerning pending or actual litigation, or any document prepared in the provision of legal services or legal advice to the borough or the assembly, or any of its departments, boards, commissions, subdivisions, officers or employees by the borough attorney's office; or any other attorney-client privilege or attorney work product relating to borough business;
- C. Personnel, payroll, medical files and other files which reveal the personal, financial or medical status of any specific individual other than gross pay, position title, name or unique identifier if, upon determination of the borough clerk in consultation with the borough attorney, the employee's privacy or safety or organizational security would be adversely impacted due to the release of the employee's full name, and average cost of benefits allocated in the budget [EXCEPT UPON THE SPECIFIC WRITTEN AUTHORIZATION OF THE INDIVIDUAL CONCERNED];
- D. The name, address, telephone number or other identifying information about complainants in actions to enforce borough ordinances;
- E. Records of engineering or other technical data which if released would provide a competitive advantage to any person or corporation engaged in similar or related activities;
- F. Proprietary information which a manufacturer, consultant or provider reasonably requires to be kept privileged or confidential to protect the property interests of persons providing the information or data;

- G. Information which municipal governments engaged in collective bargaining consider to be privileged or confidential for purposes of successful collective bargaining;
- H. Information obtained by and in the custody of insurance carriers insuring the borough, and their attorneys and agents, regarding possible and pending claims against the borough; and records maintained in the borough regarding such claims;
- I. Health, mental health, medical or juvenile information obtained or prepared by the borough with respect to any person for whom treatment or services were provided;
- J. Personal information given to the borough with the legitimate expectation of privacy in conjunction with borough services;
- K. Records disclosing individual reserve levels on claims against the borough, or records or documents pertaining to any claims against the borough or school district, including, but not limited to, risk management files under any insurance or self-insurance program;
- L. Any record, nondisclosure of which is authorized by a valid Alaska or federal statute or regulation, or by a privilege, exemption or principal recognized by the courts, or by a protective order authorized by law;
- M. Emergency 911 call information. Prior to release of audio or other information related to a 911 call, the home address, cell phone number, health information or other personally identifiable information of an individual may be redacted or withheld to protect the privacy interests of the individual.
- N. Deliberative process records. There is a judicially recognized public policy need to encourage open, frank deliberations among government officials about proposed or contemplated governmental action. Records containing deliberative process information are confidential and need not be disclosed. Notwithstanding, the mayor may disclose the requested records on appeal, pursuant to a determination that the interest of the public in having access to the records outweighs the need to assert the deliberative process privilege.
- O. Records or information pertaining to security and critical infrastructure in the borough.
 - 1. Records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security and critical infrastructure in the borough, or to a detailed description or evaluation of systems, facilities, or critical infrastructure in the borough, will be kept confidential, but only to the extent that the production of the records or information:
 - a. Could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, critical infrastructure, or procedures;

- b. Would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or
 - c. Could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare.
- 2. Security system recordings of the interior of borough work areas, or other information, that could reasonably reveal private or confidential information of members of the public or of borough employees will be kept confidential.
- 3. Nothing in this section may be construed to limit disclosure required for necessary construction, renovation, or remodeling work on a public building or other part of the critical infrastructure of the municipality. Disclosure for such purposes may be conditioned on the user signing a document to ensure confidentiality of such records. Disclosure under this subsection does not constitute public disclosure.

2.54.050. Disclosure to litigants or their agents.

If the person requesting to inspect borough records or the person's principal is in litigation with the borough in a judicial or administrative forum, disclosure of any borough records relevant to that litigation or reasonably likely to lead to the discovery of relevant evidence is governed by the rules or orders of that forum, and not by this chapter. Under such circumstances the requested records will not be provided to the requestor under the provisions of this chapter.

2.54.060. Response to requests for access to public records.

All borough officers and employees shall, consistent with the orderly conduct of borough business, make a good faith and diligent effort to provide a reasonable and prompt response to a record request [A RAPID AND INTELLIGIBLE RESPONSE TO REQUESTS FOR INSPECTION OF RECORDS] made pursuant to this chapter. Nothing in this chapter may be construed to require the borough to respond to a record request on the same day the request is received. To effectuate this policy, the following [GUIDELINES ARE ADOPTED] provisions apply:

A. Request Referral[—RECORDS OR ACCESS TO BE PROVIDED.]

- 1. The clerk's office will receive and route all record requests, including a request for record inspection appointment, to the department or service area director reasonably likely to be in possession of the requested record.
- 2. The department or service area director, or designee, will promptly notify the clerk's office if it will take more than 10 business days to respond to the request.

3. The department or service area director, or designee, will also provide the clerk's office with actual or estimated employee time to search for, retrieve, or review the record and may request exempt status or privilege review as appropriate.

[1. ALL REQUESTS TO INSPECT OR COPY PUBLIC RECORDS SHALL BE REFERRED TO THE DIVISION OR DEPARTMENT HEAD WHO IS RESPONSIBLE FOR THOSE RECORDS.

2. THE DIVISION OR DEPARTMENT HEAD, OR DELEGATE, SHALL PROMPTLY AND REASONABLY ATTEMPT TO PROVIDE THE RECORDS OR INFORMATION REQUESTED, OR ACCESS THERETO, UNLESS THE INFORMATION REQUESTED IS EXEMPT FROM DISCLOSURE, PRIVILEGED OR CONFIDENTIAL.]

B. [REQUEST FOR RECORDS EXEMPT FROM DISCLOSURE]Exempt Records.

1. Where there is a question as to whether the information or records requested are exempt from disclosure, privileged or confidential, the request shall be referred to the borough attorney [OR DESIGNEE] for a legal recommendation as to whether the material is subject to disclosure. The [Borough Clerk shall] borough clerk will make the final determination regarding disclosure after considering the advice of the borough attorney [OR DESIGNEE].

2. If the information requested is determined to be exempt from disclosure, the borough clerk, within 10 business days of receiving the request, will inform the requestor in writing and provide the legal authority for non-disclosure, withholding, or redaction of the record.[THE PERSON REQUESTING THE INFORMATION SHALL BE ADVISED IN WRITING, STATING THE APPLICABLE LAW OR RULE OF EXEMPTION, WITHIN 10 WORKING DAYS OF RECEIVING THE REQUEST; SUCH WRITING SHALL BE SIGNED BY THE BOROUGH CLERK OR DESIGNEE.]

C. Requests Insufficient to Describe Record Sought. Requests must describe the record sought in sufficient detail for the borough to adequately identify and locate the record. If the request is vague or so broad as to make it difficult to determine or identify the records of information requested, the [EMPLOYEE SHALL] borough clerk must, within 10 business days of receiving the request, inform the requestor in writing [SO ADVISE THE REQUESTING PERSON WITHIN 10 WORKING DAYS OF RECEIVING THE REQUEST].

D. Records Cannot Be Located. If the records cannot be located in time to make a response within 10 working days of the request, [THE REQUESTING PARTY SHALL BE PROMPTLY SO ADVISED] the borough clerk will inform the requestor in writing; if the requesting party still desires the information or records, and pays costs pursuant to KPB 2.54.070, a reasonable and diligent search shall be made for them.

- E. Original Records. Original records or information [SHALL]may not leave the custody of the borough but may be viewed by a requestor in the presence of a person designated by the borough clerk. Personnel time involved with overseeing such a request will be included in the overall cost pursuant to KPB 2.54.070.
- G. Harassment Requests. A request may be denied if the borough clerk reasonably determines that a record request is for the purpose of harassment of borough employees or borough officials or to unduly interfere with the orderly conduct of borough business. Any denial under this subsection will be automatically reviewed by the mayor pursuant to KPB 2.54.080(A). For the purposes of this subsection, it is a rebuttal presumption, which may be rebutted by the requestor, that a requestor violates this subsection if: (1) the request covers the same topic the requestor has requested within the previously 3 months; (2) more than 10 hours of borough employee time has been spent responding to the requestor over a thirty-day period; or (3) more than 5 requests have been submitted by the same requestor in a calendar month.

2.54.070. Cost and expenses.

- A. The borough may require the requestor to prepay all costs and expenses associated with responding to a request for records, including reasonable personnel, administrative overhead and copying costs and expenses including but not limited custodial time and time spent to search for, retrieve, and review record. In any case, pursuant to AS 40.25.110, if the production of records for one requestor in a calendar month exceeds five person-hours, the public agency shall require the requestor to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and production tasks. The requestor shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.
- B. Nothing in this chapter requires the borough to organize, coordinate, collate, modify, create, interpret, program, translate, transcribe, decode or otherwise convert information and any request for public records in a form which requires the borough or any of its employees to do such acts may be granted only on a time available basis and only upon prepayment of all costs and expenses, including salary and administrative overhead, reasonably required to provide the records in the form requested.
- C. The mayor may waive imposition of costs under subsection (B) when in the best interests of the borough or when the cost is nominal and so long as any such waiver is uniformly applied among persons who are similarly situated.

2.54.080. Appeals.

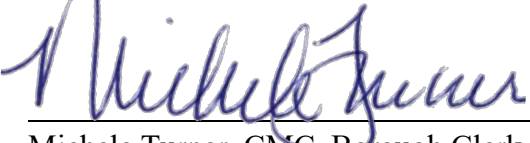
- A. A record request denial may be appealed, through the clerk's office, without fee to the mayor by the person making the request. An appeal must be filed within 30 days after the request is denied in writing. A failure to timely appeal from a denial waives all rights of appeal. The mayor will consider and decide the appeal in writing within 30 days.
- B. A denial made pursuant to KPB 2.54.060(G) will automatically be reviewed by the mayor. The requestor will be provided notice and an opportunity to provide a statement in writing within 14 business days of the initial denial. The mayor then has 30 days to issue a decision in writing.
- C. An appeal from the decision of the mayor may be made to the Superior Court at Kenai, Alaska within 30 days after the mayor's decision is distributed to the requestor.

SECTION 2. That this ordinance shall be effective immediately.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF APRIL, 2024.


Brent Johnson, Assembly President

ATTEST:


Michele Turner, CMC, Borough Clerk



Yes: Cooper, Cox, Ecklund, Elam, Hibbert, Ribbens, Tunseth, Tupper, Johnson
No: None
Absent: None