

RESOLUTION NO. 3943

A RESOLUTION OF THE CITY OF PASCO, WASHINGTON, RESCINDING RESOLUTION NO. 3460 REGARDING PUBLIC RECORDS REQUESTS AND REPLACING IT WITH A COMPREHENSIVE PUBLIC RECORDS POLICY THROUGH ADMINISTRATIVE ORDER.

WHEREAS, the City of Pasco previously adopted the Washington State Attorney General's advisory rules as Resolution No. 3267, and subsequent amendments through Resolutions No. 3446 and No. 3460; and

WHEREAS, the Washington State Legislature has passed updates to Revised Code of Washington, Chapter 42.56 Public Records Act, via ESHB 1594 and EHB 1595 in 2017-2018 as well as other legislation; and

WHEREAS, the City finds it necessary to update its disclosure and disposition procedures consistent with the legislative changes, **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON:

Section 1. Records Index. The City finds that maintaining an index is unduly burdensome and would interfere with City operations. The requirement would unduly burden or interfere with City operations in the following ways:

- 1) Given the number of different departments/divisions in the City, the maintenance of a single index is impractical; and
- 2) Due to activity levels in the City, the type and number of records is constantly changing.

Section 2. The City Manager is hereby authorized and directed to institute the Public Records Policy, and furthermore, authorized to amend such administrative policies and practices as necessary and appropriate. The Public Records Policy shall be readily available to the public at City Hall and on the City's website and is attached hereto as **EXHIBIT A**.

PASSED by the City Council of the City of Pasco, Washington, at its regular meeting on the 2nd day of March, 2020.



Saul Martinez
Mayor

ATTEST:



Debra Barham, CMC
City Clerk

APPROVED AS TO FORM:

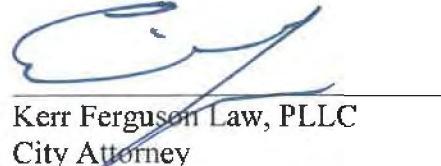

Kerr Ferguson Law, PLLC
City Attorney

EXHIBIT A

CITY OF PASCO ADMINISTRATIVE ORDER

Administrative Order No.									
Administrative and Community Service									
Subject: Public Records Policy									Initial Effective Date: March _____, 2020
Revised									
Approved									

Authority provided to the City Manager through Resolution No. _____, approved by Council on _____.

I. PURPOSE:

This Order is necessary in order to update uniform rules and procedures regarding the City of Pasco's Public Records Policy, previously defined and adopted by Resolution No. 3460.

II. DEPARTMENTS AFFECTED:

All.

III. POLICY:

The purposes of this policy are to: (1) describe the organization of the City; and (2) comply with Chapter 42.56 RCW, the Public Records Act. Except where these guidelines are mandated by statute, 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 deems necessary, and to revise or change the policy at any time.

This policy shall be available at City Hall and posted on the City's Website.

IV. PROCEDURES:

1. AGENCY DESCRIPTION - PUBLIC RECORDS OFFICER - CONTACT INFORMATION.

A) Agency Description. The City of Pasco is a Washington Municipal Corporation providing municipal services. The City's central office is located at the Pasco City Hall, located at 525 North 3rd Avenue, Pasco, WA.

B) Public Records Officer. Any person wishing to request access to public records or seeking assistance in making a request, should contact the City's Public Records Officer. The City Manager has designated the City Clerk as the City's Public Records

Officer pursuant to RCW 42.56.580. While the Public Records Officer may offer help and guidance relating to any public records request, requests for police records, fire & emergency medical services incident records, and municipal court records should be directed to the designated records officer within those departments. The contact information is listed below.

C) Contact Information.

The Public Records Requests webpage provides details on how and where to submit a public records request. The webpage is located at <https://www.pasco-wa.gov/193/Public-Records-Requests> or Google "City of Pasco Public Records."

- 1) Requests for General and Police Body Worn Camera records. Requests to inspect or copy records should be made to the City Clerk's Office using the on-line public records request portal (NextRequest) or at the information provided below. For questions regarding the online portal, contact the City Clerk's Office:

City Clerk's Office
City of Pasco
525 North 3rd Ave., Pasco WA 99301
Telephone: (509) 544-3096
Facsimile: (509) 543-5727
Email: cityclerkPRR@pasco-wa.gov

- 2) Requests for Police records. Requests to inspect or copy records maintained by the City's Police Department, with the exception of Body Worn Camera records, should be made to the Police Records Officer at:

Records Office
City of Pasco Police Department
215 W Sylvester St., Pasco WA 99301
Telephone: (509) 545-3421
Facsimile: (509) 545-3423
Email: records@pasco-wa.gov

- 3) Requests for Fire and Emergency Medical Services Incident records. Requests to inspect or copy records for fire and emergency medical services incidents, maintained by the City's Fire Department should be made to the department at:

Fire Administration
City of Pasco Fire Department
310 North Oregon Ave., Pasco WA 99301
Telephone: (509) 545-3426
Facsimile: (509) 543-5717
Email: pascofire@pasco-wa.gov

4) Requests for Municipal Court records. Requests to inspect or copy records maintained by the Pasco Municipal Court, should be made to the Court Administrator at:

Municipal Court Administration
City of Pasco
1016 North 4th, Pasco WA 99301
Telephone: (509) 545-3491
Facsimile: (509) 545-3494
Email: municipalcourtPRR@pasco-wa.gov

5) Internet access to records: Many of the City's public records are available on the City's website at www.pasco-wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

D) Compliance with the Public Records Act. The Public Records Officer will oversee compliance with the Public Records Act, but another City staff member may process a request once received. Therefore, these rules will refer to the Public Records Officer "or designee." The Public Records Officer or designee and the City will provide the fullest assistance to requestors, ensure that public records are protected from damage or disorganization, and prevent the amount of time spent fulfilling public records requests from causing excessive interference with essential functions of the City.

2. AVAILABILITY OF PUBLIC RECORDS.

A) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the City.

- 1) The City Clerk's Office, Police Department and Fire Department hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays.
- 2) The Municipal Court hours are Monday through Friday, 8:30 a.m. to 12:30 p.m., and 1:30 p.m. to 4:00 p.m., excluding legal holidays.

B) Organization of records. The City will maintain its records in a reasonably organized manner consistent with available resources. Pursuant to RCW 42.56.070(4), the City of Pasco has determined that development and maintenance of a current index of all public records as required by RCW 42.56.070(3) is unduly burdensome. *See City of Pasco Resolution No. _____.*

C) Retention of Records. The City is not required to retain all records it creates or uses. However, the City will follow **RCW Chapter 40.14, Preservation and Destruction of Public Records**, in the retention and destruction of public records. The Secretary of State, State Archives Committee approves a general retention schedule for local agency records (including cities) that is common to most agencies. Individual agencies may seek approval from the Local Records Committee for retention schedules specific to

their agency or that, due to their particular business needs, must be kept longer than provided in the general schedule.

The local agencies retention schedule is available at www.secstate.wa.gov/archives. Retention schedules for documents vary based on the content of the record. *WAC 44-14-03005*.

D) Making a request for public records.

- 1) A public records request must be for identifiable record(s). A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records. A variety of public records are available on the City's website at www.pasco-wa.gov. Requesters are encouraged to view the public records currently available on the website at no charge prior to submitting a records request.

Requesters are strongly encouraged to use the applicable public records request forms available at the offices identified in the Contact Information (1.C. as written above) or utilizing the online Public Records Requests Portal (Next Request) located on the City of Pasco's website: www.pasco-wa.gov/publicrecords. Requests may be made online, in person, by letter, or e-mail addressed to the Public Records Officer and include the following information:

- a) Name of requestor (optional);
- b) Company/Organization (optional);
- c) Contact information, either a telephone number, mailing address, and/or e-mail address (required in order to respond to the request); and
- d) Description of "identifiable" the public records adequate for the Public Records Officer or designee to locate the records.
- 2) Requests submitted by mail addressed to the Public Records Officer will be deemed received on the date received by the City. Requests submitted electronically to the Public Records Officer will be deemed received on the date it is received, but requests received after the close of business will be deemed received on the next business day.
- 3) If the requestor wishes to have copies of the records instead of simply inspecting them, fees may apply depending on the type and format of responsive records. Refer to the Fees Schedule for details, Section 5. COSTS OF PROVIDING COPIES OF PUBLIC RECORDS.
- 4) In the event the records requested in any department are readily available, of a routine nature, and do not involve the interest of any other person, the Public Records Officer or the department head may authorize the immediate inspection and/or copying of such record without the necessity of filing the request as provided in 2(D)(1).

3. PROCESSING OF PUBLIC RECORDS REQUEST - GENERAL.

A) Providing Fullest Assistance. The City is charged by statute with adopting rules which provide how it will “provide full access to public records,” “protect records from damage or disorganization,” “prevent excessive interference with other essential functions of the City,” provide “fullest assistance” to requestors, and provide the “most timely possible action” on public records requests. The Public Records Officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

B) Response. Within five (5) business days of receiving a public records request, the Public Records Officer or designee will respond by doing one or more of the following:

- 1) Make the record(s) available, in whole or part, for inspection or copying;
- 2) Acknowledge the request and provide a reasonable estimate of time required by the City to respond to the request;
- 3) Acknowledge the request and ask the requestor to provide clarification for a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time necessary to respond to the request if it is not clarified; or
- 4) Deny the Records Request.
 - The City may deny a request, in whole or part, and provide the legal basis for such denial.
 - The City may also deny an automatically generated (“bot”) request that is one of multiple requests received from the same Requestor within a 24-hour period, if the City establishes that responding to the multiple requests would cause excessive interference with the other essential functions of the City. A "bot" request means a records request that the City reasonably believes was automatically generated by a computer program or script.

NOTE: In computing time, the day on which the request is received does not count as one of the five business days. Holidays and weekends are also excluded from the calculation of time. RCW 1.12.040.

C) Large Requests. When a public records request is for a large volume of records, the Public Records Officer may elect to provide records on an installment basis if he or she reasonably determines that it would be practical to provide the records in that way. If a requester does not contact the Public Records Officer or designee to arrange for the review of any installment within thirty (30) days of notice of review, the City may deem the request abandoned, stop fulfilling the remainder of the request, and close the request. The City may fulfill smaller requests received after a large request prior to fulfilling the large request.

The Public Records Officer or designee may use the following criteria and method for identifying large or complex requests. Such criteria and method may be amended from time to time as the demand for records and the availability of resources change.

The Public Records Officer or designee may consider the following criteria when identifying large or complex requests: (1) the general, expansive, or all-inclusive nature of the request; (2) the number of departments involved; (3) the location of records and available method of searching records; (4) the potential number of records implicated; (5) the rights of third parties; (6) the need for clarification of the request; (7) administrative tasks necessary to process the request; (8) the amount of time needed to review documents for applicable exemptions; (9) the need for legal review of the public records request; (10) the format of relevant records; and (11) other relevant circumstances.

The method for applying the criteria in reviewing the requests shall be the use of the Public Records Request Evaluation Sheet, attached hereto as **Exhibit A**. The Public Records Officer or designee shall score those requests, which appear to be potentially large or complex by using the Public Records Request Evaluation Sheet. A request that scores 8 points or less shall be considered a Routine request, and will be processed together with other Routine requests in the order such requests were received. A request that scores 9 points or greater shall be considered Large or Complex, and will be processed together with other Large or Complex requests in the order such requests were received. In the event the records requested in any department are readily available, of a common nature, and do not involve the interest of any other person, the public records officer or the department head may authorize the immediate inspection and/or copying of such record without the necessity of filing the request as provided in subsection 2(D)(1) above.

- 1) Requestors are encouraged to narrow or clarify large or complex requests. A request that is narrowed or clarified will be rescored to determine if the request qualifies as Routine and can otherwise be processed with the other pending Routine requests. Requestors are encouraged to consider the needs of others and utilize the public records request process responsibly.
- 2) A requestor may appeal the determination that a request is Large or Complex to the City Manager or designee by providing a written request for review of the determination to the City Manager's office within ten (10) business days of the determination. A written decision shall be issued by the City Manager or designee within five (5) business days from receipt of the appeal unless extended or waived by mutual written agreement.

D) **Notice to Third Parties.** If a public record contains information affecting an individual or organization other than the person who requested the public record, the City may notify that individual or organization to allow the third party to seek relief pursuant to RCW 42.56.540, unless notice is required by law. The notice to the affected persons or organizations will include a copy of the request. Third parties shall be given 15 business

days to obtain and provide to the City an order from the court preventing or limiting disclosure. Nothing in this policy is intended to create any right to such notice.

- E) Duplicate Requests: Different Timeframe. When a requestor makes multiple public records requests for the same identifiable records but for different timeframes, the City may, in the City's discretion, combine the requests into one public records request.
- F) No Duty to Create Records. The City is not obligated to answer written questions, create new public records, or provide a record in a format different from the original format of the record; however, the City may, in its discretion, offer to create such a record to fulfill a request where it may be easier for the City to create a record responsive to the request than to collect and make available voluminous records.
- G) No Duty to Supplement Responses. The City is not obligated to hold current records requests open to respond to requests for records that may be created in the future. A new request must be made to obtain later-created public records.
- H) Reference to Website. The City may fulfill requests by providing a link to the records published on the City's public website.
- I) Unclear Requests. If a public record request is vague or otherwise unclear, the City shall request clarification from the requestor for any portion that is unclear, in accordance with Section 3(B) (3) above. If the requestor fails to clarify the request within 10 business days, the City may deem the unclear portion of the request as having been abandoned, but shall continue to prepare a response to any clear portions of the request in accordance with RCW 42.56.
- J) Records Exempt from Disclosure. After the City Staff has gathered responsive records, the Public Records Officer or designee, and in some incidences in conjunction with the City Attorney's Office, shall determine whether an exemption applies to all or part of the record. If the City believes that a record is exempt from disclosure and should be withheld, the Public Records Officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the Public Records Officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted. The City need not make available for inspection and copying public records exempt from public inspection and copying under Chapter 42.56 RCW and other records exempt from public inspection and copying under State or Federal statute or regulation. Here is the link to the list of the Revised Code of Washington (RCW) public disclosure exemptions prepared the Code Reviser's Office: [Public Disclosure Exemptions](#).
- K) Privilege Log. If the City determines that a record is exempt and should be withheld, the City will maintain a privilege log of applicable withheld records. The privilege log will identify:

- 1) Type of record withheld.
- 2) Date of record.
- 3) Number of pages.
- 4) Author or recipient, unless their identity is exempt.
- 5) The exemption invoked.
- 6) A brief explanation describing how the exemption applies.

A copy of the privilege log will be provided to the requestor.

L) Inspection of Records.

- 1) Consistent with other demands, the City shall promptly provide a location at City Hall to inspect public records. The requestor may not remove a record from the viewing area or disassemble or alter any records. No fee shall be charged for the inspection of public records. The requestor shall indicate which documents, if any, he or she wishes the City to copy.
- 2) The requestor must claim or review the assembled records within thirty (30) days of the City's notification to him or her that the records are available for inspection or copying. The City will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the City to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day (30) period or make other arrangements, the City may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

M) Providing Copies of Records. Upon request, and after payment of any required deposit or fees, the Public Records Officer or designee will provide copies or arrange for copying of public records. Refer to Section 5, Costs of Providing Copies of Public Records.

N) Completion of Inspection and/or Release of Records. When the inspection of the responsive records is complete and all responsive copies are provided to the requester, the Public Records Officer or designee will indicate that the City has completed a diligent search for the requested records and has made the nonexempt records available for inspection and/or release. A written notification will be provided to the requestor that the request has been completed and closed.

O) Closing Withdrawn or Abandoned Requests. The Public Records Officer or designee will close the request and notify the requestor in writing that the City has closed the request when the requestor either:

- 1) Withdraws the request;
- 2) Fails to fulfill his or her obligations to inspect the records;
- 3) Fails to pay the 10% deposit;
- 4) Fails to pay the required fees for an installment; or
- 5) Fails to make final payment for the requested copies.

P) Later Discovered Documents. If, after the City has informed the requestor that it has provided all available records, the City becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional records and provide them on an expedited basis.

4. REQUESTS TRACKING LOG.

A) The City shall log the following for all public records requests:

- 1) Identity of Requestor, if provided.
- 2) Date the request was received.
- 3) The text of the original request.
- 4) Description of records produced in response to request.
- 5) Description of records redacted or withheld and the reasons for redaction and/or withholding.
- 6) Date of final disposition of the request.

The City shall maintain such Public Records Requests Tracking Log in accordance with the retention schedule under RCW 40.14

5. COSTS OF PROVIDING COPIES OF PUBLIC RECORDS.

A) No costs for inspecting. There is no fee for inspecting public records, including inspecting records published on a public City website.

B) Actual costs. Except where provided in this section, the City finds that calculating actual costs for providing copies of public records for every public records request would be unduly burdensome. The City does not have significant resources, and the cost and effort that would be expended when calculating actual costs would interfere with City operations.

C) Charges for Copies. Per RCW 42.56.120, the City will charge one or more of the following charges for copies:

- 1) Fifteen cents (15¢) per page for standard (8 ½ inch x 11 inch or 8 ½ inch x 14 inch) black-and-white copies or for the use of City equipment to make standard black-and-white copies;
- 2) Ten cents (10¢) per page for any paper records that are scanned so they can be produced in electronic format or for the use of City equipment for scanning.
- 3) Five cents (5¢) for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system.
- 4) Ten cents (10¢) per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations.
- 5) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.
- 6) The actual cost of copying and taxes actually charged by any third-party vendor used to make copies of specialized records such as maps, plan, blue-prints, etc.

The Public Records Officer may elect to waive these fees. Fees will be waived when the expense of billing exceeds the cost of copying and postage. If a requestor asks the City to provide an estimate of charges before copies are made, the City must provide such an estimate. The requestor must then be given the opportunity to revise their request to reduce the charges.

8) Body Worn Camera Records Fees.

- a. Per RCW 42.56.240(14)(e), the standard fee for body worn camera records video redaction costs shall be an hourly staff rate of \$41.80 as of January 1, 2020. A 10% deposit is required prior to the request (or installment of the request) is processed.
- b. Pursuant to RCW 42.56.240(14)(e), waiver of the Body Worn Camera Records fee may occur when:

1. The requester is a person directly involved in the recorded incident. The requester is required to provide Photo ID with the request.
2. The requester is the attorney representing a person directly involved with the recorded incident.
3. The requester is the person, or his or her attorney, requesting the video relevant to his/her criminal case. The requester is required to provide Photo ID with the request.
4. The requester is the executive director of the Washington State commission on African-American affairs, Asian Pacific American affairs or Hispanic affairs.
5. The requester is the attorney representing a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state constitution, or violation of a United States Department of Justice settlement agreement, and seek relief from redaction costs.

D) Deposit and Full Payment. Before beginning to make the copies, the Public Records Officer or designee may require a deposit of up to ten percent (10%) of the estimated cost of copying all the records selected by the requestor. The Public Records Officer or designee may also require the payment of the remainder of the copying cost before providing all the records, or the payment of the cost of copying an installment before providing that installment. The City will not charge sales tax when it makes copies of public records.

E) Payment. Payment may be made by cash, check, money order or debit card to the City. When necessary, payment should be made payable to the order of The City of Pasco.

F) Costs for specialized services. In the event the City is required due to the size of the records or when there is a need for specialized copying equipment (i.e., photographs, blueprints, taped or video recordings) to use the services of an outside source designated by the City, the requestor shall be required to pay the actual costs of such service, including delivery and return of public records for the purpose of copying.

- 1) Before the City may expend any specialized services costs or assess those costs, the City must notify the requestor of the specialized service charge to be applied to the request, including an explanation of why the specialized service charge applies, a description of the specific expertise, and a reasonable estimate of the charge. The notice must also provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a specialized service charge.

G) Costs of mailing. The City may also charge actual costs of mailing or postage (including the costs of the shipping container) and the actual costs of long-distance facsimile transmission.

6. REVIEW OF DENIALS OF PUBLIC RECORDS.

- A) Petition for Internal Administrative Review of Denial of Access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the Public Records Officer for a review of that decision. The petition shall include a copy of, or reasonably identify, the written statement by the Public Records Officer or designee denying the request.
- B) Consideration of Petition for Review. The Public Records Officer shall promptly provide the petition and any other relevant information to the City Attorney. The City Attorney will immediately consider the petition and either affirm or reverse the denial within two (2) business days following the City's receipt of the petition, or within such other time as the City and the requestor shall mutually agree upon. The comments incorporated in WAC, Chapter 44-14 may be relied upon as authority for determinations made by the City in applying or interpreting this Administrative Order.
- C) Alternative Dispute Resolution. In the event of a dispute regarding the inspection or copying of public records, the parties are encouraged to first meet in a good faith attempt to resolve the dispute by agreement of the parties or by mediation. In the event the dispute remains, the dispute can be resolved by arbitration pursuant to RCW Chapter, 7.04A, the Mandatory Rules of Arbitration, as amended, and venue being placed in Franklin County, Washington.
- D) Judicial Review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two (2) business days after the initial denial, regardless of any internal administrative appeal.

V. REFERENCES:

Revised Code of Washington (RCW) Chapter 42.56 (Public Records Act); Washington Administrative Code (WAC) Chapter 44-14 (Public Records Act – Model Rules) provides direction and assistance regarding Requests for Public Records; and RCW Chapter 40.14 (Preservation and Destruction of Public Records).

Public Records Request Evaluation Sheet

<u>Score</u>	<u>Weight</u>	<u>Measurement Criteria</u>
		(1) General, Expansive or all-inclusive nature of request
0		Specific documents, records identified
1		Records generally identified
2		Records Unidentified
—	—	
		(2) Number of departments involved
0		Records in one Department or Division
1		Records in two or three Departments or Divisions
2		Records in more than three Departments or Divisions
—	—	
		(3) Location of available / relevant records
0		Records in active files
0		Records in searchable database
1		Records in archive files
1		Records must be searched in individual locations
—	—	
		(4) Potential number of records implicated
0		Less than 10 documents (not pages)
1		More than 10, less than 50 documents
3		More than 50 less than 500 documents
5		Greater than 500 documents
—	—	
		(5) Third party notifications
0		No notifications
1		Notifications
—	—	
		(6) Need for clarification
0		No clarification needed
1		Clarification needed
—	—	
		(7) Administrative tasks needed to process request
1		Interpretation
1		Search Hard Copy
0		Search electronic Copy
2		Metadata
1		Search Other
1		File prep for photograph, Scan
1		Burning CD/DVD or Outsourcing Production
0		File prep for electronic production
—	—	
		(8) Time needed for review for exemptions
0		No review time
1		Review time less than 2 hours
2		Greater than 2 hours, less than 10 hours
3		Greater than 10 hours
—	—	
		(9) Legal review required
0		No legal review required
1		Legal review required
—	—	
		(10) Other Relevant Factors
—	—	Total Score