

The Basics of Florida's Public Records Law **2015**

City of Gainesville

ASK YOURSELF THE FOLLOWING QUESTIONS WHEN YOU RECEIVE A PUBLIC RECORDS REQUEST:

1. AM I SUBJECT TO THE PUBLIC RECORDS LAW?

YES. All local government employees and officials, as well as private entities acting on behalf of a local government, are subject to the public records law.

2. IS IT A PUBLIC RECORD?

PROBABLY. The public has a right to access almost everything that has anything to do with city business.

- Unless specifically exempted by either the FL Constitution or the FL Statutes, the public has a right to access all materials that are made or received by a public body, officer, employee, or persons acting on their behalf, and used to perpetuate, communicate, or formalize knowledge in connection with official business.

This broad definition includes materials regardless of physical form, characteristics, or means of transmission (from city or personal phones/computers) and includes tapes, photographs, sound recordings, data software, emails, texts, Facebook posts, personnel records, and even unfinished drafts and notes, etc., if they were used to “perpetuate, communicate, or formalize knowledge” regarding official business. Note: preliminary drafts or notes that were prepared strictly for the personal use of the writer and are not shown to anyone do not fall within the definition of ‘public record.’

3. IS THERE A REQUIREMENT TO KEEP AND MAINTAIN THIS PUBLIC RECORD?

YES. We are all individually responsible for maintaining our public records in the location in which they are ordinarily used and for keeping such records for the length of time specified in the official Florida Department of State retention schedule. (Located online at: <http://dos.myflorida.com/media/30960/general-records-schedulegs01-sl.pdf>.)

Common examples:

- **DUPLICATES:** until obsolete, superseded, or administrative value is lost.
- **TRANSITORY MESSAGES** (meeting reminders, most voicemails, event announcements, etc.): until obsolete, superseded, or administrative value is lost.
- **DRAFTS AND WORKING PAPERS:** until obsolete, superseded, or administrative value is lost.
- **ADMINISTRATIVE SUPPORT** (day-to-day office management, sign-up sheets, etc.): until obsolete, superseded, or administrative value is lost.
- **ADMINISTRATIVE CORRESPONDENCE AND MEMORANDA** (not about policy or official office mission): 3 fiscal years.
- **PROGRAM AND POLICY CORRESPONDENCE AND MEMORANDA** (policy development, substantive program issues): 5 fiscal years.
- **ATTENDANCE AND LEAVE RECORDS:** 3 fiscal years.
- **COMMERCIAL BUILDING PLANS:** life of structure.
- **APPROVED BUDGET:** permanent.

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4. WHO HAS A RIGHT TO ACCESS THIS PUBLIC RECORD?

EVERYONE. In fact, we may not ask the reason why someone is requesting a record, and we may not require a requestor to submit the request in writing, provide information (such as his/her name), sign for a record, etc.

5. DO I POTENTIALLY HAVE ANY RECORDS THAT MAY BE RESPONSIVE TO THIS REQUEST?

DECENTRALIZED SYSTEM (E.G., GENERAL GOVERNMENT): If **YES:** 1) ask yourself the rest of these questions, gather the records and respond in an amount of time that is reasonable given the records at issue, and 2) forward the request to any other applicable departments/employees. If **NO,** receive the request and forward to applicable departments/employees. Note: if we receive a public records request, even if we personally do not have any applicable records, it is our individual responsibility to facilitate the request; we may not give requestors the "run around" by unreasonably directing them to other departments/employees.

CENTRALIZED SYSTEM (E.G., GRU, GPD): If **YES:** 1) ask yourself the rest of these questions, gather the records and respond in an amount of time that is reasonable given the records at issue, and 2) forward the request to the organization's designated public records official. If **NO,** receive the request and forward to the organization's designated public records official, or at least facilitate the requestor with contacting the public records official.

6. DO I HAVE TO PROVIDE THE RECORDS IMMEDIATELY?

NO. However, we are required to acknowledge requests promptly and to respond to such requests in good faith and in a reasonable amount of time that allows us to properly retrieve the records and determine if the records include any exempt information. Note: if we are unable to provide the records immediately, and although we generally may not require the requestor to submit information, we may in that case ask the requestor if he/she would prefer to either return at a certain time or provide contact information (e.g., mailing address, email address, etc.).

7. IS THERE ANY EXEMPT OR CONFIDENTIAL INFORMATION IN THE PUBLIC RECORD THAT I MAY NOT DISCLOSE?

MAYBE. See the attachment titled '*Florida's Public Records Law – Frequently Used Exemptions*' for the most common exemptions. If the public record has exempt information, redact (e.g., black out) the exempt information and cite to the specific law that deems such information exempt.

8. HOW DO I RESPOND TO THE REQUEST AND PRODUCE THE PUBLIC RECORDS?

Depending on the records, we may provide them immediately with no written response OR see the attached *Form Responses* for examples of written responses (and how to calculate and collect the Special Service Charge if applicable). As long as the requestor has provided enough information to enable you to identify the records, we are required to provide access to and/or copies of the public records at a reasonable time and under reasonable supervision, provided that all required fees are paid. Note: while we are required to provide access to and/or

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copies of public records, we are not required to reformat records, create a new record in response to a request, or answer questions about the public records.

The two potential fees in any public records request are: 1) a Special Service Charge, and 2) copy or duplication fees. It is the City of Gainesville's policy that we require an advanced deposit of a Special Service Charge for any request that takes greater than 15 minutes to produce. In other words, we gather and prepare all the records we are able to in 15 minutes and provide these without a Special Service Charge, but would then require an advanced deposit of a Special Service Charge before we spend more time on gathering and preparing the requested records. In addition, if the requestor wants copies (rather than just to inspect the records in person), we also need to first collect the applicable copy or duplication fees as outlined in the attachment titled '*Public Records – Administrative Procedure.*'

9. DO I STILL HAVE QUESTIONS?

Contact the City Attorney's Office.

- Sean McDermott
Assistant City Attorney II

P.O. Box 490, Station 46
Gainesville, FL 32627
(352) 393-8820
mcdermottsm@cityofgainesville.org

Florida's Public Records Law – Frequently Used Exemptions

PERSONNEL RELATED EXEMPTIONS

- Social security numbers of all current and former employees (FS § (119.071(4)(a) and FS § 119.071(5)(a)3).
- Employee payroll deduction records (FS § 1012.31(3)(a)4).
- Direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries (FS § 17.076(5)).
- Records identifying individual participants in any contract or account relating to tax-sheltered annuities or custodial accounts and their personal account activities (FS § 112.21(1)).
- Records identifying individual participants in any deferred compensation plan and their personal account activities (FS § 112.215(7)).
- Names and addresses of retirees (FS § 121.031(5)).
- Employee medical records (FS § 1012.31(3) (a)5).
- Medical information pertaining to a prospective, current, or former Board or Commission member or employee which, if disclosed, would identify that person (FS § 119.071(4)(b)).
- Information relating to the medical condition or status of any person covered by health or life insurance benefits provided or administered by the employer (FS § 760.50(5)).
- Documents and inspection results produced pursuant to (FS § 440.39(7)) relating to investigation and prosecution of claims against third-party tortfeasors under worker's compensation laws (FS § 440.39(7)).
- Except as provided in (FS § 440.102(8)), all information, interviews, reports, statements, memoranda, and drug test results received or produced as a result of a drug-testing program (FS § 440.102(8)).
- Documentation of unsatisfactory explanation of positive drug test results of employees or job applicants (FS § 112.0455(8)(l)).
- Medical records and reports of an injured employee and any information identifying an injured employee in medical bills which are provided to the Department of Financial Services (FS § 440.125).
- Various specified law enforcement records, including active criminal intelligence information and active criminal investigation information (FS § 119.071(2)(c) - (j)).
- Home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, Florida judges and current and former state and assistant state attorneys as well as the home addresses, telephone numbers, social security numbers, photographs and places of employment of their spouses and children in addition to the names and locations of schools and day care facilities attended by the children of those personnel (FS § 119.071(4)(d)1).
- Home addresses, telephone numbers, social security numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers whose duties include hiring and firing employees, labor contract negotiations, administration, or other personnel-related duties as well as the home addresses, telephone numbers, social security numbers, photographs and places of employment of their spouses and children in addition to the names and locations of schools and day care facilities attended by the children of those personnel (FS § 119.071(4)(d)5).
- Any complaint and any material relating to the investigation of a complaint against an employee, until the conclusion of the preliminary investigation or until such time as the preliminary investigation ceases to be active (FS § 1012.31(3)(a)1).
- Bank account, debit, charge and credit card account numbers (FS § 119.071(5)(b)).
- Claims files maintained by a risk-management program administered by the District, until

termination of all litigation and settlement of all claims arising from the same incident, although some portions of the files may remain exempt (FS § 768.28(16)(b)).

- Examination questions, and their answers sheets, administered by a governmental agency for the purpose of licensure, certification or employment (although the person taking the exam may review his/her own completed exam). (FS § 119.071(1)(a)).
- Criminal or juvenile personnel background check information obtained under FS Ch. 435 for employment screening (FS § 435.09).
- The identity of a whistle-blower (and, if there is an investigation, other information received during the investigation) (FS § 112.3188).
- Information provided to an agency for purpose of forming ridesharing arrangements that reveals the identity of the individual (FS § 119.071(5)(e)).
- The complaint against a teacher or administrator and all information obtained during the preliminary investigation by the Department of Education, until the conclusion of the investigation or when the investigation ceases to be active (FS § 1012.796(4)).
- Complaints and other records which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap or marital status until a finding is made of probable cause, the investigation becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding (FS § 119.0713(1)).
- Biometric identification information, including fingerprints. (FS § 119.071(5)(g)1).
- DCF reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, the name of any person reporting child abuse, abandonment, or neglect, and all records and reports of the child protection team of the Department of Health. (FS §§ 39.202(1), (5), & (6); 39.201 (1)(b)).
- Information received during the interview or from any other source regarding the alleged abuse or neglect of the child in a child protective investigation or a criminal investigation. (FS §§ 39.301 (18)(b)).
- Regarding child abuse, abandonment, or neglect, all information obtained in the discharge of official duty by any judge, employee of the court, authorized agent of DCF, correctional probation officer, or law enforcement agent. (FS §§ 39.0132(4)(A)1)

PURCHASING RELATED EXEMPTIONS

- Sealed bids or proposals received pursuant to invitations to bid or requests for proposals (FS § 119.071(1)(b)).
- Any financial statement which an agency requires a prospective bidder to submit in order to pre-qualify for bidding (FS § 119.071(1)(c)).
- Appraisals, offers, or counteroffers relating to a county's purchase of real property for educational purposes until executed or 30 days before the Board considers a contract/agreement for approval (FS § 1013.14(1)(a)).

LEGAL AND AUDIT RELATED EXEMPTIONS

- Audit workpapers and notes until audit is completed and the audit report becomes final (FS § 119.0713(3)).
- A public record which was prepared by an agency attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory in anticipation of imminent litigation or imminent adversarial administrative proceedings (FS § 119.071(1)(d)1).
- Identity of donors and all information identifying donors and prospective donors of direct-support organizations (FS § 1001.453(4)).
- Work product developed in preparation for collective bargaining (FS § 447.605(3)).

SECURITY RELATED EXEMPTIONS

- Information relating to the security systems for any property owned or leased and information relating to the security systems for any privately owned or leased property (FS § 119.071(3)(a) and FS § 281.301).
- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats which depict the internal layout and structural elements of buildings or other structures owned or operated (FS § 119.071(3)(b)).
- Data processing software obtained by the City or its agencies or boards under a licensing agreement prohibiting its disclosure and which software is a trade secret and City produced data processing software that is sensitive (FS § 119.071(1)(f)).
- Personal records such as personal e-mail unrelated to official government business do not become public records just because they exist on a government computer or are kept in a government office.



Administrative Procedures

Number G-5

Public Records

I. Purpose and Scope

The purpose of this Administrative Procedure is to implement the City's Public Records Policy and ensure that the City's public records are retained and accessible in accordance with Florida law. This Administrative Procedure shall apply to all City employees; it shall not apply to City Commissioners.

II. Definitions

- A. "Actual cost of duplication" is defined by Florida Statute Section 119.011(1) (2009), as may be amended from time to time by the Florida Legislature. Currently, the "actual cost of duplication" means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.
- B. "Public records" is defined by Florida Statute Section 119.011(12) (2009), as may be amended from time to time by the Florida Legislature. Currently, "public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to include "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." By way of example, computer records, e-mails, Facebook entries, tape recordings, text messages, voicemails, and instant messages are public records when they are made or received by a City employee in connection with official City business and are used to perpetuate, communicate, or formalize knowledge.
- C. "Public records request" shall mean a request submitted to any City employee by any person, either orally or in writing, to inspect or copy the City's public records.
- D. "Redact" is defined by Florida Statute Section 119.011(13) (2009), as may be amended from time to time by the Florida Legislature. Currently, "redact" means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

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III. Retention of the City's Public Records

- A. Each City employee is the custodian of any public record under his or her supervision and control, such as the public records located in an employee's office desk drawer or an employee's City e-mails. As such, each City employee who has public records in his or her custody is required to retain such records in accordance with the records retention schedules established by the Florida Department of State. For example, the current record retention schedule provides that administrative correspondence and memoranda, the record category which many e-mails will fall into, must be maintained by each City employee for three (3) fiscal years. In addition, the current record retention schedule provides that transitory messages, the record category which many e-mails will also fall into, must be retained until obsolete, superseded, or until their administrative value is lost. The records retention schedules, which may be amended from time to time, are currently available online at http://dhis.dos.state.fl.us/RecordsMgmt/gen_records_schedules.cfm.
- B. Significant advances in information technology have allowed City employees to perform their job functions through the use of numerous electronic devices and systems. For instance, many City employees are equipped with mobile handheld devices on which they can access their City e-mail, send and receive text messages, access the internet, and receive voicemails. In addition, some City employees may use instant messaging, chat rooms, social networking pages, or other internet-based tools to accomplish their job functions. In the course of using such devices or systems, City employees may create or receive public records. If public records are in fact created or received on such devices or systems, City employees are required to retain such records in accordance with Florida's public records law. **All devices and systems used to conduct City business shall have the capability to retain public records created or received by such.** For example, if a City employee's mobile handheld device is unable to retain copies of text messages in accordance with the state retention schedule so that they are available for inspection and copying, the City employee is prohibited from using the text messaging function to conduct City business.
- C. City employees' e-mail and other electronic records are periodically backed up by the City's information technology personnel. Generally, this is done in the event of disaster recovery. The City's information technology personnel are not the custodian of electronic public records for individual City employees or departments, and City employees shall not rely on information technology personnel to retain public records for which they are the custodian.

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IV. Public Records on Personal Electronic Devices or Systems

- a. City employees are prohibited from conducting City business on their personal computers other than through the use of a VPN (or similar) connection to the City's network or webmail, and they are prohibited from downloading City information or data onto their personal computers or other personal electronic devices or systems. City employees are also prohibited from using personal e-mail accounts to conduct City business.
- b. The City recognizes that a person or entity may communicate with a City employee regarding official City business on Personal IT Systems through no fault of the City employee. Such communications are not a violation of this policy; however, City employees shall request the person or entity to communicate with the City employee through City IT Systems and, if possible, copy the electronic communication onto the City IT Systems. In addition, due to work requirements, it may be occasionally necessary to use Personal IT Systems to conduct official City business. Such occasional use is not a violation of this policy; however, City employees shall, if possible, copy all electronic information related to official City business onto the City IT Systems. In addition, if public records are in fact created or received, City employees are required to retain such records and make them available for inspection and copying in accordance with Florida's public records law.
- c. To the extent that City employees conduct City business on personal electronic devices or systems, without the use of a VPN (or similar) connection or webmail, such electronic information is fully owned by the City and such conduct will cause employees to lose any expectation of privacy in their personal electronic devices or systems. For example, in such a case, an employee's personal computer may be seized by the City to respond to a public records request or for discovery purposes during a lawsuit involving City business.

V. Disposal of Public Records

Each Charter Officer shall ensure that public records are disposed of in compliance with Florida Statute Sections 119.021(2) and 257.36 (2009), as may be amended from time to time, and Florida Administrative Code Rule 1B-24 (2008), as may be amended from time to time.

VI. Public Records of Terminated City Employees

When an employee's employment with the City is terminated, such employee shall deliver all public records, for which he or she is the custodian, to his or her successor or, if there is none, to his or her supervisor.

VII. Access to the City's Public Records

- A. When City employees receive a public records request, they shall permit the requested records to be inspected and copied by any person desiring to do

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so, at any reasonable time, under reasonable conditions, and under supervision by the custodian (or designee) of the public records. Inspection of records may be limited to the hours during which the office of the City employee is open to the public.

- B. Any person who submits a public records request is not required to submit such a request in writing, nor is such a person required to provide his or her name or other personal information, sign for the receipt of the records, or provide a reason for requesting records. In addition, City employees are not required to give out information from the public records or answer questions about public records. City employees are also not required to create new public records in response to a public records request or reformat the City's public records.
- C. City employees may designate another employee of the City to permit the inspection and copying of public records, but they must disclose the identity of the designee to the person requesting records. For example, a manager may request for his or her executive assistant to supervise a citizen's inspection of the manager's public records, but he or she should disclose the name of the executive assistant to the person requesting records.
- D. City employees must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other City departments or employees whether such a record exists and, if so, the location at which the record can be accessed. After verifying whether or not other City departments or employees have records pertaining to the public records request, the City employee shall notify the person requesting records if other City departments or employees have public records related to his/her request. In addition, the contact information of the other City department or employees who possess public records responsive to the public records request shall be provided.
- E. Prior to allowing a person to inspect or copy a public record, City employees (or designees) must review the records to determine if any contents of the record are exempt from inspection or copying. If a City employee asserts that an exemption applies to a part of such record, he or she shall redact that portion of the record to which an exemption has been asserted and validly applies, and such employee shall produce the remainder of such record for inspection and copying. If requested by the person seeking to inspect or copy the record, the City employee shall state in writing and with particularity the reasons for the conclusion that the record is exempt.
- F. Florida law contains numerous exemptions from inspection or copying of public records. For instance, social security numbers of all City employees are exempt from disclosure, as are the home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, former state attorneys, human resources managers, and code enforcement officers. City

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employees should refer to Florida law and the Government-In-The-Sunshine Manual to determine if records are exempt from disclosure.

- G. Florida law also provides that certain public records are confidential. For example, medical records of City employees are confidential pursuant to Florida Statute Section 112.08(7) (2009). If a record is confidential, City employees shall not disclose the entire record (i.e., redaction is not necessary) unless the disclosure of such a record to certain entities or persons is permissible by law.

VIII. Copy Fees and Special Service Charges

- A. Any person may inspect public records in the presence of a City employee (or designee), and he or she may tab, clip, or in some other form, identify which documents he or she would like copied. The City employee shall compute the cost of the requested copies and collect all copy costs from the person requesting copies of public records prior to making any copies.
- B. City employees shall charge for all copies of public records the rates allowable by Florida law, as may be amended from time to time; provided, however, that the first ten (10) copies per week, per person shall be without charge. Currently, the rates allowable by Florida law and this Administrative Procedure are as follows:

Copy Type	Cost
First ten (10) copies	Free
Copies of not more than 14 inches by 8 1/2 inches	15 cents per one-sided copy, but no more than an additional 5 cents for each two-sided copy
Certified copies of a public record	1 dollar per copy
For all other copies	Actual cost of duplication

- C. If the nature or volume of public records requested to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by the City employees involved, City employees shall charge, in addition to copy costs, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the City employees providing the service that is actually incurred by the City or attributable to the City for the clerical and supervisory assistance required, or both.

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- D. For the purpose of this section, “extensive” shall be defined as taking more than 15 minutes to locate, review for exempt or confidential information, copy and re-file the requested material. The special service charge shall be computed to the nearest quarter of an hour exceeding 15 minutes based on the current rate of pay and benefits for the pay grade of the person who performed the service and will be assessed when appropriate regardless of the number of individual copies made.
- E. The requestor must be notified of any and all potential fees and charges associated with their public records request prior to inspection and copying. An estimate of the fees and charges may be provided to the requestor and approval obtained prior to producing the request. Payment of all fees and charges assessed must be received prior to copies being made and provided to the requestor and prior to the use of extensive information technology resources or staff time to respond to a public records request.

IX. Public Records Mandatory Training

- A. All City employees are required to attend training on public records. Current City employees shall attend at least one public records training session offered by the City within one year of the effective date of this Administrative Procedure. New employees shall receive public records training at new employee orientation.
- B. As Florida’s public records law is amended, updated and/or supplemented, training will be provided and mandatory for all City employees. In addition, refresher courses on public records shall be offered to all City employees.
- C. The City’s Human Resources/Organizational Development Department shall be responsible for implementation of the training component of this Administrative Procedure.

X. Non-Compliance with Public Records Procedure

- A. Failure to comply with this policy or Administrative Procedure may result in disciplinary action and possibly termination of employment.
- B. In addition, pursuant to Florida Statute Section 119.10, violations of Florida’s public records law are punishable by fine not exceeding \$500, and willful and knowing violations are subject to additional criminal penalties.

Adopted: 05/06/10
Revised: 01/24/13

