



Public Records

I. Purpose and Scope

The purpose of this Policy 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.

II. Definitions

- A. "Actual cost of duplication" is defined by Florida Statute Section 119.011(1) , as may be amended 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), as may be amended 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), as may be amended 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.

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, are currently available online at <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>
- 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. Employees' City e-mails are retained by the City's information technology department for a period of 5 years. City employees are responsible for retaining any of their emails that fall into a records retention schedule longer than 5 years. 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.

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, as may be amended, and Florida Administrative Code Rule 1B-24, as may be amended.

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 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. Every City employee shall use the City's public records portal for responding to public records requests, unless directed by their respective charter officer. 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 to the requestor. The Department which is the custodian of the records shall be responsible for fulfilling the request.
 - 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 employees should refer to Florida law and the current version of Government-In-The-Sunshine Manual (which is available online at <http://www.myfloridalegal.com/sun.nsf/sunmanual>) to determine if records are exempt from disclosure and should consult with their supervisor and/or the City Attorney's Office if they have further questions about the public records law.

- 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). 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. Copies 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 provide an estimate of 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; provided, however, that the first ten (10) copies, per person shall be without charge. Currently, the rates allowable by Florida law and this Policy are as follows:

Copy Type	Cost
First ten (10) paper copies	Free
Copies of not more than 14 inches by 8 1/2 inches	15 cents per page (single or double sided)
Certified copies of a public record	1 dollar per certified copy
CDs and DVDs	1 dollar per disc
For all other copies (e.g., maps or plats)	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. The requestor will be notified of special service charges prior to the fulfillment of the request.
- 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 gross rate of pay of the lowest paid person who is capable of performing the service, including fringe benefits based on an annual average rate for City employees. The charge should be calculated based on the time spent by the each City employee providing the service after the request is routed to the appropriate department/division that retains custody of the public records. The charge should not include time spent by the Records Management Liaison Officers for the City, but should include time spent by other City staff including IT employees. The charge will be assessed when appropriate regardless of the number of individual copies made.
- E. The requestor must be notified of any and all potential charges associated with their public records request prior to inspection and copying. Prior to the City making and providing copies to the requestor and using extensive information technology resources or staff time to respond to a public records request, City must provide a written estimate of the charges to the requestor and the requestor shall pay an advance deposit of all charges to the City. If the advance deposit exceeds the actual cost of production, the City shall refund the excess amount to the requestor. If the City determines that the actual charges incurred by the City exceed the advance deposit, the City shall provide all records compiled to the requestor and must cease efforts to produce the remaining records. If additional time or resources are necessary to produce the remaining records in order to fulfill the request completely, the City shall provide a second estimate for additional time or resources necessary to fulfill the request and the requestor shall pay a second advance deposit prior to the City producing the remainder of the records.
- F. If the City provides an estimate of the special service charge to the requestor and if the requestor does not respond within 30 days after the date the City provided the estimate, the City will not fulfill the request until payment is received. However, the City will provide to the requestor any records it was able to compile during the 15 minutes the City spent to locate, review for exempt or confidential information, and copy and re-file the requested material.
- 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 Policy. New employees shall receive public records training at new employee orientation.

- B. As Florida's public records law changes, training will be provided and is mandatory for all City employees. In addition, courses on public records shall be offered to all City employees.
- C. The City's Human Resources Department shall be responsible for implementation of the training component of this Policy.

X. Non-Compliance with Public Records Policy

- A. Failure to comply with this Policy 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.

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