



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Unfinished Business

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I.4.

4/19/2022

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**Subject:**

AO-47, The Coordination of Public Records Request

**Fiscal Impact:**

N/A

**Dept/Office:**

District 1 Commission Office

**Requested Action:**

Board discussion on AO-47 and give staff direction.

**Summary Explanation and Background:**

**Clerk to the Board Instructions:**



April 20, 2022

**M E M O R A N D U M**

**TO:** Rita Pritchett, County Commissioner District 1

**RE:** Item I.4., AO-47 The Coordination of Public Records Request

The Board of County Commissioners, in regular session on April 19, 2022, discussed AO-47 and directed the County Manager to begin making changes to AO-47.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK**

*for Denna Scott*  
Kimberly Powell, Clerk to the Board

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**cc:** Each Commissioner  
County Manager  
County Attorney



BOARD OF COUNTY COMMISSIONERS

## ADMINISTRATIVE ORDER

Number: AO-47  
Cancels: 10/06/2015  
Approved: 02/11/2020  
Originator: County Attorney  
Review: 02/11/2023

## TITLE: COORDINATION OF PUBLIC RECORDS REQUESTS

### I. PURPOSE

Brevard County is committed to the requirements set forth in Chapter 119, Florida Statutes, governing access to public records, also known as the Public Records Law.

The purpose of this Administrative Order is to provide guidelines and procedures for all County administrative personnel, department directors and staff to assure compliance and uniformity with regard to the handling of requests for inspection and copies of public records not exempted by State law.

### II. AUTHORITY

- A. Chapter 119, Florida Statutes – The Public Records Law
- B. BCC-22, Records Management Program
- C. BCC-30, Cost of Copying Documents for the Public
- D. BCC-33, Social Media Policy

### III. DEFINITIONS

- A. **Public Records** – all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of 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. This includes electronic records, such as any data files or databases, word processing files, spreadsheets, digital photos, voice and video recordings, electronically generated or maintained documents relating to County business and any other electronic messages relating to County business, including text messages, tweets, written communication on social networking websites, and email.
- B. **Records Custodian** - an employee appointed by the director of each County department to oversee the management, retention and timely disposition of their records, whether maintained on-site, offsite, in electronic systems or stored at the Records Management Center; and assists in carrying out the

requirements of Section 119.07, Florida Statutes.

- C. **Records Coordinator** - the individual appointed by the County Attorney to coordinate the County's response to public records requests in conjunction with the Records Custodians from each department.
- D. **Requestor** – the person requesting to inspect and/or receive copies of public records.
- E. **Redacting** – to electronically conceal or manually black out from a copy of an original public record any information deemed confidential or exempt from disclosure by statute.
- F. **Public Records Request Tracking Software** - a software program utilized by County staff and monitored by the Records Coordinator to assist staff in assuring records requests are timely addressed.

#### IV. WHAT IS A PUBLIC RECORD?

Section 119.011, Florida Statutes, defines "public records" as 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 the County.

**A. Public records include (but are not limited to):**

1. All paper documents maintained by County employees or County officials, including any archived documents stored in private or public facilities.
2. All electronic records relating to County business whether generated on work or home computers, phones, or other electronic devices including, but not limited to, email, text and voice mail.
3. All materials made or received by the County in connection with official business which are used to perpetuate, communicate or formalize knowledge.
4. Draft documents, whether on paper or electronic, once they have been sent to or circulated to another person or persons.

**B. The following are not public records:**

1. Personal emails, text messages, social media messages, or substantially similar communications that do not involve official business of the County.
2. Draft documents that have not been circulated to another person or persons.
3. Personal notes concerning County business unless they are circulated or sent to others or if they were taken with the intention to perpetuate, communicate, or formalize knowledge.
4. Based upon the current status of the law, web browser history is not a public record. (Note: If any documents showing an employee's web browsing history were previously created and/or are created for official

county business (such as a disciplinary action) those documents would be public records. However, any such records should be reviewed for redaction of any exempt and/or confidential information prior to disclosure.)

## **V. RESPONDING TO A PUBLIC RECORDS REQUEST**

### **A. General Employee Responsibilities**

- 1. Notify the department's Records Custodian of the request.**
- 2. Respect the requesting party's rights under the law**, including his or her right to remain anonymous. A requestor is not required to provide any identifying information, nor is the party required to put a request for public records in writing. The requestor can be asked for contact information, but if the requestor declines to give such information, it cannot be required. Any inquiry after that should be how to contact the requestor or have the requestor contact the employee about payment of any authorized deposits/fees or to pick up the records.
- 3. Refer the requestor to a location on Brevard County's website whenever possible.** In cases where the County's website hosts the same records as those requested, such as recordings of board meetings or presentations, providing a link to the specific webpage should be sufficient and may be more convenient and cost-effective for the requestor. **Do not simply provide a link or direction to the website. Take steps to: (1) ensure that the requesting party is able to access the relevant portion of the website; and (2) confirm that the information on the website is fully responsive to the request made.**
- 4. Follow approved procedures for processing public records requests**, which are outlined in this Administrative Order.

### **B. DEPARTMENT DIRECTOR RESPONSIBILITIES**

- 1. Appoint an employee to be the Records Custodian for the department.**
- 2. Support the Records Custodian and other employees in fulfilling public records requests made and ensure they have appropriate training.** Fulfilling public records requests is a legally required part of the job of every County employee.
- 3. Follow approved procedures for processing public records requests**, which are outlined in this Administrative Order.

### **C. RECORDS CUSTODIAN RESPONSIBILITIES**

- 1. Be knowledgeable about the public records tracking software program.** A user manual for Records Custodians will be made available. It is important that Records Custodians understand how to enter requests into the program so that the County can track, and

efficiently fulfill all records requests.

2. **Upon receipt of a new request for public records, enter the information and original request into the public records tracking system.**

3. **Determine if the request is cumulative to a pending prior request and requires extensive staff time to fulfill the request or is a new request to the extent allowed by law. For example,**

3.A. if a requestor seeks to expand a pending request, you can add the additional items into the existing request rather than creating a new request. In determining if a request is cumulative consider the following:

A.1. Is it regarding a substantially similar topic or sub-topic;

B.2. Is it an expansion of the scope of a prior request;

C.3. Duration of time which has passed between the requests;

D.4. lack of ability to verify the requests are from the same person;

E.5. any other reasonable basis for concluding that the request is cumulative to a prior request.

F.B. If it is determined that the request is cumulative to a pending request and requires extensive time to fulfill the request, inform requestor of the cumulative nature of the request and provide an invoice with the additional time and amount.

4. **Direct the requestor to the correct department for the records.** Sometimes, requestors might approach the wrong department for records. If the records sought are being held by another department, the requestor should be directed to the appropriate department. **If a record sought has an unknown origin, contact the Records Coordinator.**
5. **Contact the Records Coordinator if a request might include records outside the department.** The Records Coordinator exists to facilitate multi-departmental requests. Do not hesitate to contact the Records Coordinator for assistance.
6. **Contact the Records Coordinator if a request includes emails.** The Office of the County Attorney and the Information Technology Department are the only two departments with the capacity to comprehensively search County emails. As a result, the Record Custodian may have to go to the Office of the County Attorney to review the results of such email searches performed. All emails shall be reviewed by the Records Custodian and the appropriate county staff member to ensure no exempt and/or confidential information is contained therein. If a request for a Commissioner's emails is received, the Commissioner and/or his or her designee shall be responsible for ensuring all responsive emails are included and review the emails for exempt and/or confidential information.

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7. **Make all non-exempt records available**, in their original format, for inspection and/or copying within a reasonable timeframe of the original request. **There are many exemptions and the County is required to invoke them when applicable.** Personal information subject to exemptions may be contained in records other than a personnel file. Therefore, if a request seeks **any** information regarding a specific employee, prior to release, the record custodian shall contact Human Resources to check whether the employee is entitled to any personal exemptions prior to the release of the information. If a department is unsure as to whether certain information is exempt under Florida law, contact the County Attorney's Office for clarification.
8. **Do not create new records to respond to a public records request except as required by law.** A request may come in asking for answers to a list of questions, to fill out a form, or otherwise seeking a county employee to create a new record. If there is a responsive record that provides the information sought it should be provided, otherwise inform the requestor that there are no responsive records. This direction would not prevent a department from providing information from electronically stored records using the software routinely used to access and use the records in the normal course of business. If a department is unsure how to respond to a request for electronically stored records, contact the County Attorney's Office for clarification. Staff shall not be required to answer any questions regarding the public records provided.
9. **In writing, acknowledge a request has been received and, if needed, clarify the request.** Many requests require clarification. Communicating with the requestor often will result in a more focused request that involves less time and expense to respond.
10. **Follow up on records requests promptly.** When the request is for particular records that are readily available, a best practice is to make them available to the requestor as soon as possible. In other cases, let the requesting party know when the records will be available for inspection, or that extensive research will be required.
11. **Charge requestors for the cost of duplication and for extensive staff time.** Extensive staff time is defined as any time after the first fifteen minutes that it takes to research, gather or process the public records request, as well as the time spent with the requestor to review the records. Commissioners may charge for Commissioner time to research, gather or process public records; however, the amount a Commissioner can charge shall be limited to the average cost (salary and benefits) of the Commissioner's staff.
12. **Provide the requesting party with a cost estimate prior to fulfilling his or her request.** This estimate should include the cost of the time required for redacting any exempted information as well as the time spent reviewing emails generated through the IT department.

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13. Refer to the attached Public Records Request Fee and Cost Schedules to quote, estimate and invoice for the costs associated with the public records request.
14. Collect all of the fees for the estimated duplication and staff time fees upfront before starting the work to gather or research or duplicate records. Require additional funds be provided prior to release of the records if the cost estimate is exceeded, or reimburse any amount necessary should the amount collected be more than the actual cost of resources used. The funds received for reimbursement of employee time and/or copying costs will be deposited by the department whose staff is responsible for the response. If multiple departments are involved in responding to a request, the funds received will be shared in a pro rata share in accordance with the time spent by each department's staff in responding to the request.
- ~~14.15. Unpaid invoices. If a requestor has previously received an invoice and has not paid the costs associated with that request, the County will not provide records for subsequent requests until such time as the past due amounts have been paid.~~
- 15.16. Close any open requests after 30 days with no contact with the requestor. If a requestor has not been in contact with the department for more than 30 days after an letter /email is sent with deposit information or requesting clarification of the request, the department should close the request. The initial letter/email to the requestor should advise the requestor that if the County does not receive a response within 30 days of the letter/email, it will be assumed that the requestor does not wish to proceed with the request and the request will be considered closed. Provide for and supervise all inspections of original or master copies of public records to prevent damage, loss or alteration.
- 16.17. Maintain a record of the request and its resolution. Update the public records request tracking software program on a regular basis to provide the status of the request until closed by providing the records or by notification to requestor that request was closed based on lack of communication or failure to provide deposit after thirty or more days of initial contact from Records Custodian/Coordinator. Status updates would include a summary of contacts between a custodian and requestor that result in a revised request and how it was revised.
- 17.18. Update the public records tracking software program to note the location of the County's copy of what was provided in response to the records request.
- 18.19. Maintain public records in accordance with the dictates of Florida law and BCC-22.
- 19.20. Follow approved procedures for processing public records requests, which are outlined in this Administrative Order.

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## **VI. COUNTY ATTORNEY SUPPORT FEE**

If the County Attorney's Office, or its appointed Records Coordinator, spends more than five (5) hours with a given department in ensuring a request gets fulfilled, the department will be assessed a \$200/hour fee for the support provided by the County Attorney's Office. These costs will be assessed to the requestor and shall be paid in full prior to the production of any associated records in accordance with section V(C)(14) above.

## **VII. RESERVATION OF AUTHORITY**

The authority to issue and/or revise this Administrative Order is reserved to the County Manager.

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Frank Abbate, County Manager

\_\_\_\_\_  
Date

### Public Records Request Fee Schedule\*

Those seeking copies of public records will be charged only the actual costs of making copies. However, if the nature or volume of the request requires extensive use of technology or clerical assistance by County staff, the county may charge, in addition to actual cost of duplication, an additional special service charge in accordance with Chapter 119, Florida Statutes. In order to charge the actual cost for employee time for the special service charge the record custodian shall use the specific staff member's hourly rate including the cost of benefits.<sup>1</sup> Commissioners may charge for Commissioner time to research, gather or process public records; however, the amount a Commissioner can charge shall be limited to the average cost (salary and benefits) of the Commissioner's staff. This amount can be obtained from the department's finance officer. If multiple employees are involved in responding to the request, the appropriate hourly rate should be applied for the time each spent on the response. County Commissioners shall be deemed to work a twenty-hour work week for computation of hourly rates in relation to a public record request.

### Public Records Cost Schedule\*

As of the date of this revision of AO-47, the uniform fee for copies to be charged by all departments is as follows, unless otherwise provided by law:

Media	Cost
Paper: First 30 pages per month	Free
Paper: 11x8.5 or less - one-sided	.15
Paper: 11x8.5 or less - two-sided	.20
Paper: 14x8.5 or less - one-sided	.15
Paper: 14x8.5 or less - two-sided	.20
Paper: 11x17	.25
Media Storage Devices (Flash Drives, CDs, DVDs, VHS, etc.)	All actual cost of the media storage device and any associated sleeve/packaging. Actual mailing costs must be charged rather than a flat fee. Mailing costs include jewel case and padded mailing envelope, subtracting the sleeve cost, plus postage.
Postage	Large orders or those to be mailed out of country will be weighed and calculated individually, using <a href="http://www.usps.gov">www.usps.gov</a> for postage rates.
Copy Service Costs	Any unusually large volume of copying that requires the documents to be sent to a copy service for reproduction will be billed to the requestor based on the actual cost to

<sup>1</sup> The department shall make a reasonable effort to designate the lowest paid qualified employee(s) operationally available to work on responses to record requests to make the records available at the lowest possible cost to a requestor.

	the county.
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