



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Miscellaneous

J.3.

1/7/2020

Subject:

Board Direction regarding Public Records Policy/Procedure, Dist. 2

Fiscal Impact:

Reduced costs to County (see summary explanation and background) and increased preservation of taxpayer dollars

Dept/Office:

District 2

Requested Action:

Seek Board direction on potential changes to AO-47 and BCC-22

Summary Explanation and Background:

BCC-22 provides the County Commission's policy on the County's record management system. AO-47 outlines the County staff procedures with regard to processing public record requests. Revisions to both BCC-22 and AO-47 were placed on the County Commission Agenda by the County Attorney's Office for the May 21, 2019 meeting and again on the July 23, 2019 meeting as part of the routine sunset review process. Prior to both meetings, the items were removed from the agenda for consideration of additional changes.

Over the past several years, there has been a significant increase in the number of public record requests being processed by Brevard County staff as illustrated in the chart below.

YEAR	REQUESTS
2016	845
2017	1057
2018	1147
2019 (to date)	1373

This change represents approximately a 62% increase in requests from 2016 to 2019 (to the date this document was initially drafted). Importantly, these numbers only reflect those requests that are entered into the tracking system and do not represent all requests made to County staff. Many requests are fulfilled by county staff without use of the tracking system. This trend of increasing requests is only likely to continue and, as the number of requests increase, the staff time necessary to respond in a timely and efficient manner increases as well.

The current system set up by the County to respond to public records requests requires each department to designate a records custodian, who, in addition to his/her regular job duties, is required to

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respond to public record requests for documents maintained in his/her department. If the records requested are maintained in multiple departments, the records custodian for each department assists to respond to the request. Departments with fewer employees may be disproportionately impacted by an increased volume of public records requests.

Under Chapter 119, a public agency has a statutory duty to provide access to public records and can impose statutorily authorized fees for copies and, under certain circumstances, a service charge, as designated by Section 119.07(4), Florida Statutes solely to cover actual costs. Currently, the County's policy implements the Statute with regard to copying charges and establishes parameters to charge a service fee when a response requires extensive staff time. "Extensive staff time" is defined in AO-47 as "any time after the first one-half hour 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."

Given the significant increase in the number of public record requests received by the County and the resulting increase in staff time associated with responding to the requests, consideration should be made to revise the current policy and procedure to ensure continued efficiency in responding to all requests for public records. Some potential changes to consider are as follows:

- Changing the definition of "extensive staff time" to any time after the first fifteen minutes to research, gather or process the public record request as well as the time spent with the requestor to review the records.
- Amend policy, as memorialized in applicable governing documents, to aggregate cumulative public record requests to avoid exploitation of a potential loophole in the waiver of the initial fifteen (or thirty) minutes of staff time expended in processing public record requests.
 - o For instance, assume the County receives a request pertaining to 1-10000 Any Street and the County estimates the time to process this request amounts to one hour. If the requestor narrows down the request to four separate requests (e.g., an initial request for 1-2500 Any Street, a second request for 2501-5000 Any Street, a subsequent request for 5001-7500 Any Street, and a final request for 7501-10000 Any Street), if the requests are not treated as cumulative and, accordingly, as a single request, these four requests could be processed at no charge to the requestor despite requiring at least as much staff time to process as a one-time request for the very same information which would have resulted in charges being incurred by the requestor.
 - o Indicia of a request being cumulative include: (1) a substantially similar topic, subtopic, and/or target contemplated by the subsequent request; (2) an overt expansion of scope of the original request (e.g., substantially similar records sought

over a broadening and/or continuing range or set of targets); (3) the duration of time which has passed between the most recent prior request and the subsequent request(s); (4) lack of an ability to verify that the requestor is, in fact, distinct from the original requestor (e.g., throwaway email accounts used for initial and/or subsequent request(s)); and any other articulable basis for concluding that a subsequent request is cumulative and should be treated as an expansion of the preceding request.

- In the event a request requires “extensive staff time” to respond, the full estimated cost of such time be paid in advance of processing the response to the request instead of 50% of the estimated cost (which is the County’s present policy).
- Change the hourly rates for “extensive staff time” to reflect the actual cost of the staff member(s) who are working on the response to the request. This would be the specific staff member’s hourly rate including the cost of benefits. This would eliminate the current fee rate schedule which has a blended or averaged professional rate (\$16.26/hr) and an administrative rate (\$9.44/hr).
 - o As many individuals consider service on the Board of County Commissioners not to be a full-time job, for purposes of setting a uniform hourly rate for all County Commissioners, County Commissioners shall be deemed to work twenty-hour work weeks for computation of hourly rates in relation to a public record request.
- Include language within AO-47 and BCC-22 that emphasizes that staff and/or record custodians shall not create new records in order to respond to a public records request. This directive is routinely communicated during public record training provided by the County Attorney’s Office; however, it may be prudent to include it in the policy and procedure as well.
- Include language, as appropriate, to better ensure that staff takes all appropriate measures to ensure that records of employees entitled to exemptions pursuant to § 119.071, Fla. Stat., shall not be produced until such time as any and all exempted content is lawfully redacted.
 - o An employee’s written notice of entitlement to such exemption to Human Resources and/or the County Attorney’s Office shall be treated as indicative of an entitlement to such exemption unless and until such time as the County Attorney’s Office has reviewed the notice and determined that it is statutorily insufficient. Staff

may, however, require such notice be in a particular or specified format as may be permissible under applicable law.

These proposed changes for consideration are intended to allow staff to continue processing public record requests in an efficient manner and ensure that the County's actual cost(s) associated with responding to the request(s) is/are reimbursed in full compliance with applicable law. Implementation of the aforementioned recommended changes is in keeping with our fiduciary duty to be good stewards and watchdogs of taxpayer funds and will better ensure that actual costs associated with production of public records be defrayed primarily by the requestor as opposed to being borne, in large part, by taxpayers who have nothing whatsoever to do with particular public record requests and who do not stand to benefit from them.

Clerk to the Board Instructions:



January 8, 2020

M E M O R A N D U M

TO: Commissioner Bryan Lober, District 2

RE: Item J.3., Board Direction Regarding Public Records Policy/Procedure

The Board of County Commissioners, in regular session on January 7, 2020, discussed and approved the proposed changes to AO-47 and BCC-22, as detailed on the Agenda Report, with two amendments, as follows:

- Add a statement on Page 2, under the second circle, where it states indicia of a request being cumulative, a statement that says, 'The application of the indicia request being cumulative shall be applied only in so far as is allowed by existing law'
- As to new records on Page 3, to add a clause to be inserted where it says include language within AO-47 and BCC-22, 'except where required by law the staff and custodians shall not create new records'

Enclosed is the Agenda Report.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: County Attorney



ADMINISTRATIVE ORDER

**Title: COORDINATION OF PUBLIC
RECORDS REQUESTS**

Number: AO-47
Cancel: 04/07/2010
Approved: 10/06/2015
Originator: County Attorney
Review: 10/06/220018

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.

I. AUTHORITY

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

II. DEFINITIONS

- A. Electronic Records** – any data files and 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 Florida Statute 119.07.

- C. Records Coordinator** - the individual appointed by the County Attorney to coordinate the responses of the departments to requests for public records that are received.
- 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 appointed Records Coordinator to assist staff in assuring records requests are timely addressed.

III. WHAT IS A PUBLIC RECORD?

Section 119.011(1), 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 an agency 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 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.

IV. 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 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 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. 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.**
- 3. 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 Coordinator for assistance.

4. **Contact the Records Coordinator if a request includes emails.** The Office of the County Attorney and Information Systems are the only two departments with the capacity to comprehensively search county email. 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.
5. **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.** If a department is unsure as to whether certain information is exempt under Florida law, contact the County Attorney's Office for clarification.
6. **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.
7. **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.
8. **Charge requestors for the cost of duplication and for extensive staff time.** Extensive staff time is defined as any time after the first one-half hour 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.
9. **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.
10. **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.**
11. **Collect 50 percent of the fees for the estimated duplication and staff time fees upfront before starting the work to gather or research or duplicate records.** Collect the remaining balance prior to release of the records, or reimburse any amount necessary should the amount collected be more than the actual cost of resources used.
12. **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. When closing the request, the Records Custodian should, if possible, send a written communication to the requestor notifying the requestor that the request has been closed. This communication should also inform the requestor that the request can be renewed at any time if desired.

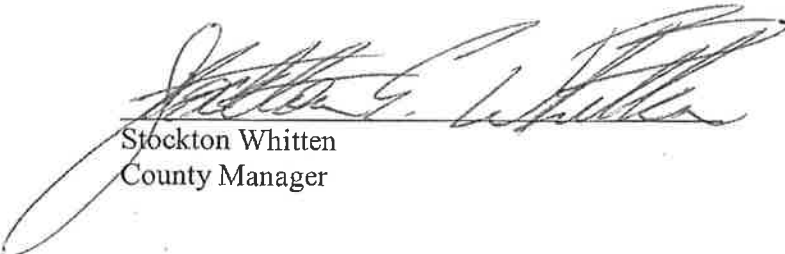
13. **Provide for and supervise all inspections of original or master copies of public records** to prevent damage, loss or alteration.
14. **Maintain a record of the request and its resolution.** Update the public records request tracking program on a regular basis to provide the status of the request until closed by providing the records or by notification to requester 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.
15. **Update the public records tracking software to note the location of the County's copy of what was provided in response to the records request.**
16. **Maintain public records in accordance with the dictates of BCC-22.**
17. **Follow approved procedures for processing public records requests,** which are outlined in this Administrative Order.

V. 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.

V. RESERVATION OF AUTHORITY

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



Stockton Whitten
County Manager

October 6, 2015
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(4)(d), Florida Statutes, and paragraph V.C.7 above.

Professional Rate ¹	Administrative Rate ²
\$16.26/hr	\$9.44/hr

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 www.usps.gov 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 the county.

¹ Professional rate is calculated as the lowest professional rate County-wide, with "professional" determined by the EEO designation, as shown in the Pay and Classification Plan (updated September 28, 2013). Also, the Agriculture and Extension department wages are partially paid by the University of Florida (UF). Accordingly, that department's pay rate was not considered in making this calculation.

² The Administrative rate is determined by the lowest clerical rate County-wide, with "clerical" determined by the EEO designation, as shown in the Pay and Classification Plan (updated September 28, 2013).

*Fee and Cost Schedules approved by the Board of County Commissioners on October 6, 2015.



POLICY

Title: Records Management Program

Number: BCC-22
Cancels: 03/05/2013
Approved: 10/06/2015
Originator: County Attorney
Review: 10/06/2018

I. PURPOSE

To establish a records management program that provides efficient, economical, and effective control over the creation, utilization, preservation, protection, storage, public access and final disposition of agency records.

II. REFERENCES

- A. Chapter 119 Florida Statutes - Public Records Act
- B. Chapter 257.36 Florida Statutes - Records and Information Management
257.36(5) (a) Records Management Liaison Officer (RMLO)
- C. Florida Administrative Code
Rule IB-24 - Public Records Scheduling and Disposition
Rule IB-26 - Records Management Standards and Requirements
Rule I B-26.003 - Electronic Recordkeeping
- D. General Records Schedules: GSI-SL State and Local Government Agencies; GS2 Law Enforcement, Correctional Facilities and Medical Examiner; GS8 Fire Department; GS 14 Public Utilities and, GS 15 Public Libraries
- E. AO-47-Coordination of Public Records Requests, Administrative Order
- F. AO-62 Emergency Preparedness Program, Administrative Order

III. DEFINITIONS

- A. **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.
- B. **Records Management Center** - a location where County records are archived for long-term or permanent retention.
- C. **Records Management Liaison Officer (RMLO)** - the County Attorney or the County Attorney's designated employee responsible for directing and administering the County's Records Management Program.
- D. **Records Manager** - an employee responsible for overseeing the operation of the Records Management Center.

- E. Records Coordinator** - the individual appointed by the County Attorney to coordinate the responses of the departments to requests for public records that are received.
- F. Public Records Request Tracking Software** - a software program utilized by the County staff and monitored by the appointed Records Coordinator to assist staff in assuring records requests are addressed in a timely manner.
- G. Records Emergency Action Plan (REAP)** - a plan for the assessment, recovery and restoration of public records in the event of a natural disaster or emergency.

IV DIRECTIVES

It is the purpose and intent of the Board of County Commissioners to establish procedures for the management of County records. To that end, all department directors under the supervision of the County Manager shall:

- A.** Adopt the general records schedules prepared by the State of Florida Records Management Program or develop agency specific records schedules.
- B.** In coordination with the Records Manager and RMLO, ensure that Brevard County complies with state laws governing the creation, maintenance, preservation, disposition and public access to all non-exempt public records regardless of physical form or characteristics that are intended to perpetuate, communicate or formalize knowledge related to county business.
- C.** Reduce the quantity of duplicate records by identifying the record keeper of the official agency or record copy.
- D.** Identify, protect and assure the appropriate preservation of all records of permanent or historical value.
- E.** Operate the Records Management Center through the creation and maintenance of electronic databases for each department transferring records for archive purposes and provide systematic review of all records eligible for destruction.
- F.** Enforce systematic destruction of records that have met their retention requirement and to create a record of the destruction with a detailed disposition document, reviewed and authorized by the RMLO. Florida Statutes Chapter 119.021 (b)(3).
- G.** Through the RMLO, provide records management training to appointed records custodians and other county employees responsible for agency records through individual and group instruction.

- H. Upon request of the RMLO, provide updated information from the department Records Custodian on the status of agency records stored in leased off-site locations, including electronic records maintained in records software programs or network locations.
- I. Upon request of the RMLO, provide updated information identifying the location of essential records to support the Records Management Emergency Action Plan (REAP) included as part of the county's Comprehensive Emergency Action Plan (CEMP).
- J. Consult with the RMLO prior to software acquisitions related to electronic records management in order to assure the programs compliance with Rule 1 B-26.003, Florida Administrative Code Electronic Recordkeeping Standards and Requirements.

V. RESPONSIBILITIES

- A. The County Manager shall assure that each Department Director:
 - 1. Appoints a Records Custodian for their department.
 - 2. Cooperates with the Records Management Liaison Officer to assure proper administration and implementation of the County's Records Management Program.
 - 3. Issue administrative orders that direct all staff in the appropriate retention and storage of Public Records based on the directives listed herein and applicable Florida law.
- B. The Department Records Custodian shall:
 - 1. Serve as a liaison between the Records Management Liaison Officer, the Records Manager, and the department.
 - 2. Oversee the creation and maintenance of departmental records and prepares required documents for records transfers to the Records Management Center and disposition forms for records destructions.
 - 3. Be responsible for the application of retention schedule item numbers for department records and knowledge of document-type lifecycles.
 - 4. Be responsible for providing the Record Manager a yearly report identifying the location of the department's essential, long term, and archived records.
 - 5. Be responsible for using the Public Records Request Tracking software for all public records requests.
 - 6. Be responsible for compiling responsive documents to Public Records Requests while working with the Records Coordinator in ensuring that complete and timely responses are provided to requestors.
- C. The Records Manager shall:
 - 1. Provide information and assistance to department records custodians in the preparation of records transfer documentation, for off-site storage, etc.
 - 2. Receive transferred boxes of records and selects location for storage.

3. Work with each department storing records in the Records Management Center to create and maintain searchable electronic databases for storing records at the Records Management Center.
4. Notify departments when their stored records have met their minimum retention requirement; assist in the creation of disposition documentation and arrange appropriate destruction.
5. Review retention schedules regularly providing updates to department records custodians in order to ensure document lifecycle retention requirements.

D. The Records Management Liaison Officer (RMLO) shall:

1. Serve as a liaison between the State of Florida Records Management Staff and Brevard County; Florida Statutes Chapter 257.36(5)(a).
2. Oversee Brevard County's Records Management Program by providing effective control over the identification, appraisal, maintenance, protection, preservation, transfer, retention and destruction of all county records.
3. Review the Records Disposition documents and authorizes destruction.
4. Offer training for department Records Custodians and updates or revisions to the Brevard County Records Management Manual.
5. Supervise the operation of the Records Management Center.
6. Prepare yearly Records Compliance Statements required by the state.
7. Report all Records Management Program concerns to the County Administration.

E. The Records-Coordinator shall:

1. Coordinate all Brevard County Public Records Requests as outlined in AO-47, Public Records and Information Requests.
2. Monitor the Public Records Request Tracking software-implemented by Information Systems for use by all departmental records custodians.


VI. COMPLIANCE RESPONSIBILITY

No county official or employee has, by virtue of their position, any personal or property right to public records created, compiled or recorded by that official or employee. The unlawful destruction, removal, and use of public records is prohibited.

VI. RESERVATION OF AUTHORITY

The authority to issue or revise this Policy is reserved to the Brevard County Board of County Commissioners.

ATTEST:


Scott Ellis, Clerk

Board of County Commissioners, Brevard County

BY:


Robin Fisher, Chairman

As approved by the Board on 10/6/15