



**ADMINISTRATIVE
ORDER**

Title: PUBLIC RECORDS MANAGEMENT

Number: AO-47

Cancel: 7/11/06

Approved: 4/7/10

Originator: County Attorney

Review: 4/7/12

I. PURPOSE

Brevard County is committed to the tenets 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 Act
- B. Section 257.36, Florida Statutes - Records and Information Management
- C. Rule 1B-24, Florida Administrative Code - Public Records Scheduling and Disposition
- D. Rule 1B-26, Florida Administrative Code - Records Management Standards
- E. Board Policy BCC-22

III. DEFINITIONS AND REFERENCES

- A. 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.
 - 1. Public records include all paper and electronic documents maintained by county employees or county officials, including any archived documents stored in private or public facilities.

2. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.
 3. Personal notes concerning county business are not public records unless they are circulated or sent to others to communicate or formalize knowledge concerning official business of the county.
 4. Draft documents, whether on paper or electronic, are also public records once those documents have been sent to or circulated to another person or persons.
 5. Electronic records include any "data files" and "databases", word processing files, spreadsheets, 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 relating to county business whether generated on work or home computers.
 6. In addition, Chapter 1B-26.003, Florida Administrative Code, includes information maintained in automated "systems" as public records. Information systems are defined as "the organized collection, processing, transmission and dissemination of information." Personal emails that do not involve official business of the county are not public records.
- B.** "Records Custodian" means an elected or appointed county officer or designee, as well as any department employee who is charged with the responsibility of maintaining public records within an office or department. For the purpose of any electronic documents which can be globally searched by technicians employed in the Information Technology Department, a Records Custodian also includes the director of the Information Technology Department.
- C.** "Requesting party" means the person requesting to inspect and/or receive copies of public records.
- D.** "Redacting" means 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.

IV. PROCEDURES FOR HANDLING PUBLIC RECORDS REQUESTS

Receipt and Evaluation of Request

- A.** Each request for public records should be evaluated with the goal of a prompt response using the following guidelines:
1. Although no specific language or written form can be required by the county if a person asks to inspect or request copies of public records, staff should attempt to clarify the request in as much detail as possible in order to reduce the time required to locate the records and avoid any unnecessary fees.
 2. Although a reasonable time (as defined in B.7, below) is allowed to respond to a public records request, the receipt of every records request should be promptly acknowledged in writing, whether by email, telephone call or letter. A telephone call shall be documented by an email.
 3. Upon receipt of the request, whether written, via email or verbal, the Records Custodian in the receiving department must email a notification of the request to the

public records Ombudsperson in the County Manager's Office. This requirement may be met by an automatic email feature in software developed and used for public records requests.

4. For each public records request received by the Ombudsperson, an electronic file must be set up to store all email and scanned documents generated by the request, including either the responsive documents actually produced; a description of the location where the responsive paper documents produced are filed; or a description of the electronic media where the responsive documents are stored. If a department has scanning equipment available, paper documents must be scanned and uploaded into the electronic public records request tracking (PRRT) system (when available) developed by the Information Technology Department.
5. Record requests received by the County Manager's Office will be forwarded by the Ombudsperson to the appropriate department(s). The department records custodian will collect the records and advise the requesting party and the Ombudsperson when the records will be available for inspection. If copies are requested, the compliance documents shall be uploaded into the PRRT system (when available).
6. Each department head shall designate a records custodian and provide the name of that person to the County Manager's Office and the County Attorney's Office.
7. The department custodian shall be responsible for assuring the maintenance and integrity of all original records under his or her control unless an offsite inspection of the original records has been approved by the County Manager in accordance with paragraph B.14, below, in which event the County Manager shall designate an individual who will be responsible for assuring that the original records produced for inspection are returned to the department custodian.
8. The Information Technology Department is developing a county government electronic system for inputting and processing public records requests (PRRT), which system is required to be consistent with this Administrative Order, AO-47, as the system applies to requests involving the inspection and copying of both paper and electronic documents. Once that system is implemented, every records custodian shall be trained in the use of the system and shall thereafter be responsible for using the system for all public records requests. Records Custodians shall be notified when the system is available and ready for training purposes.

B. Response to Request

Preliminary Review by Ombudsperson and Department Custodian

1. Each request should be reviewed carefully by the department custodian(s) and Ombudsperson to determine the estimated length of time required to gather the records. Routine requests should be satisfied immediately, when possible. Routine requests include most records readily available and managed within the department that do not contain exempt or partially exempt information.
2. In the case of requests for voluminous records involving the inspection of records maintained in one or more departments, the Ombudsperson, based on information provided by relevant department custodians, must provide the requesting party with a

written response providing the following information after coordinating a projected response time and cost with the applicable department records custodians:

- a. an estimate of the staff time required to respond to the request;
- b. the projected cost that will be charged to comply with the request;
- c. a request for a deposit in the amount of 50% of the projected cost, as determined in paragraphs 4 and 5, below, before county staff will collect or review requested documents for confidential information and redaction;
- d. an offer to allow the requesting party the alternative of inspecting any non-exempt or non-confidential records requested and identifying which specific records, if any, he or she would like to have copied.

For the purposes of this policy, a “voluminous” request is deemed to exist if one county employee will be required to expend more than thirty minutes researching, reviewing, gathering, redacting or copying the requested records.

Reasonable Charges and Deposit for Voluminous Records

3. The requesting party shall be charged for paper copies or certified copies at the rate established by the County Commission, provided any such charge shall not exceed the charges authorized by state law. *See*, Board Policy BCC-22, Resolution 05-287 and section D, below.
4. If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by county staff, the department or Ombudsperson may charge the actual cost incurred for duplication, as well as a special reasonable service charge based on the cost incurred for extensive use of information technology resources or the labor cost attributable to the clerical and supervisory assistance required to provide the service. A deposit in the amount of 50% of the estimated charge shall be required before undertaking a response to a request for voluminous public records. All charges shall be invoiced and collected by the Ombudsperson or department custodian based upon the number of copies made and the amount of time spent complying with the request in excess of thirty minutes.
5. Charges for staff time will be assessed at the hourly rate of the lowest paid staff person who is qualified to respond to or supervise (where required) a response to the request for public records.
6. In the event of non-retrieval of records copied as a result of a public records request, any advance deposit may be retained by the county and the requesting party may also be billed for any difference between the deposit and actual costs to produce the records.

Reasonable Time and Reasonable Conditions for Inspection

7. Public records must be made available within a “reasonable period of time” and “under reasonable conditions.” Although there is no statutory definition of this time period, a “reasonable period of time” and “reasonable conditions” should take into account the number of documents sought; the number of locations where the

documents are stored; whether the records are maintained electronically or as hard copies; whether the documents must be examined for confidential information or redacted; and whether substantial research will be required to identify, obtain and copy the records requested.

8. Inspections may take place at any time throughout the workday, generally Monday through Friday, 8:00 am to 5:00 pm, except holidays.
9. Persons requesting public records that are readily available in electronic form must be offered the opportunity to view records in electronic format.
10. If the records are readily available in electronic format and can be emailed or provided electronically, they should be provided as quickly as equipment allows.
11. A dedicated computer with printing capacity must be available for the inspection of records readily available in electronic form. The location, configuration and maintenance of a computer or computers dedicated for such inspections should be determined by the County Manager with advice from the Information Technology Department director.
12. If the requesting party is personally inspecting paper documents, he or she should be given paper clips to identify documents for copying. Copies should only be made after the requesting party agrees to provide the required payment or pays the deposit for a voluminous request. See section D, below.
13. Unless otherwise provided by law, the county is not required to create new records in response to a request for information, nor is the county required to reformat its records in a particular electronic format, if requested by the requesting party. However, the county is required to provide a copy of the record in the medium requested, if the county maintains the record in that medium. The county may also elect to provide a copy of a public record in the requested medium, if not routinely used in the county, and charge a reasonable fee in accordance with section 119.07(4), Florida Statutes, and paragraphs 4 and 5, above.
14. Original documents shall be produced for inspection at the location where the records are maintained by the custodian of the requested records. A central or offsite location for the inspection of original records may only be established with the approval of the County Manager, or his designee in the County Manager's Office.

Notification of Compliance to Requesting Party

15. When a response to a records request has been completed, the requesting party shall be immediately notified of the availability of the copied records, if any, and the location where the documents will be made available for pick-up. Notification shall be made by telephone and/or email, if the email address of the requesting party is known. Any email notification sent by the Ombudsperson shall be stored in an electronic file pertaining to the public records request. If a telephone notification is the only notification provided, the Ombudsperson shall make an email record of the date and time of the telephonic notification and store the email in an electronic file set up for the public records request.

Receipts and Other Evidence of County Compliance

16. When a hard paper copy, DVD or CD of a public record is delivered to a person requesting the records, the Ombudsperson or records custodian shall collect the required payment and deliver a written receipt for the amount paid. The receipt shall provide a short description of the documents being provided and shall specify the number of hard copy pages, DVD's or CD's delivered to the requesting person. The Ombudsperson shall retain a copy of the receipt.
17. In instances where electronic records are provided, a copy of the email with the responsive documents shall be maintained by the Ombudsperson or department custodian as evidence of compliance with the request. Any department custodian sending a responsive email with documents attached shall copy the Ombudsperson with the responsive email in the manner provided for by the PRRT system (when available).
18. Where the technology is available, responsive paper copies should be scanned and stored electronically in a searchable database dedicated to public records requests as evidence of compliance.
19. Until such time as a centralized, easily searchable database is established for all county records, the department records custodian or department director shall, in cooperation with the Information Technology Department, be responsible for maintaining an easily searchable database in his or her department. The Information Technology Department shall undertake its best effort, subject to the availability of funding, to provide an easily accessible and searchable database or databases that will allow county government to respond quickly and efficiently to all public records requests.
20. The Ombudsperson or records custodian is required to maintain an agency copy of a response to a public records request for a period of one year after the response has been received by the requestor.
 - a. General Records Schedule GS1-SL, Item 23, requires a minimum of one year retention for public information requests and responses.
 - b. In this way, the county will have proof of compliance and the ability to re-inspect the response, if questioned.
 - c. Those departments with scanning capability should maintain the response in electronic form with easily searchable access.
 - d. Where a response is not retrieved by the requestor, the department responsible for the coordination of the request will continue to maintain the agency copy for one year.

Photography Alternative

21. As an alternative to county staff making copies of public records, upon request, a person requesting records shall be afforded the right to photograph records using a camera while the records are in the possession, custody, and control of the records custodian under the following conditions:
 - a. Photographing of public records must be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is

impossible or impractical, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, as determined by the custodian of public records.

- b. The door to any room where a person requesting records is reviewing or photographing records shall be left open at all times.
- c. At the discretion of the department director, an employee may be assigned to stay in the room with the person photographing public records.
- d. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record.

Monitoring and Security During Inspection

22. It is advisable to have an employee present to monitor a scheduled records inspection.
23. The Records Custodian, in cooperation with the Information Technology Department is responsible for providing safeguards to protect original public records from unauthorized remote electronic access. The Records Custodian is also responsible for providing safeguards to prevent the alteration of the department's public records and to prevent disclosure or modification of those portions of public records which are exempt or confidential.

C. Records Exempt from Inspection

Review for Confidential Information

1. As the documents are collected, a review for exempt/confidential information or material must be conducted by the department custodian. Exempt/confidential items must be redacted prior to review by the requesting party. *See* Appendix A for common exemptions.
2. A record is exempt only if it is expressly exempted by statute or the Constitution, or if the record's disclosure would be contrary to a federal law that preempts Florida's public records law. If the county claims that all or part of a record is exempt, the following steps must be taken:
 - a. After a copy is made, only that portion of the record which is exempt may be deleted or redacted, *e.g.*, an employee's social security number appearing on a document. The original document must otherwise be left intact without redaction or deletion.
 - b. Exemptions set forth in this policy must be studied and understood by the records custodians. If a record or part of it is claimed to be exempt or confidential, the custodian must indicate to the requesting party the basis for the exemption including any statutory citation. Communication of such an exemption or confidential status must be delivered to the requesting party in writing, which may take the form of an email where the email address of the requesting party is known. Any dispute over the validity of an exemption shall be referred to the County Attorney's Office for an opinion.
 - c. Produce any portion of the record that is not exempt.

D. Copies and Fees

1. 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 paragraphs B.4 and 5, above.
2. A receipt for the amount of payment must be provided to the person paying for the records.
3. Those records maintained by the county in an electronic information system may transfer the electronic records from that system onto a CD or, in the case of videotaped documents, onto a DVD. Assuming that the electronic information within the system is easily retrievable, the charges for such transfer should be the actual costs of duplication. The county may charge for CD disks, if not provided by the requestor. Special charges may be added if the request is extensive enough to require clerical assistance and extensive use of technology resources.
4. 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:

Paper Copies:

First 30 pages per month, per citizen No charge

Additional:

11x8.5 or less – one-sided	.15
11x8.5 or less – two-sided	.20
14x8.5 or less – one-sided	.15
14x8.5 or less – two-sided	.20
11x17	.25

CD /DVD / VHS / Audio Tapes

Duplication: Duplication of CD's and DVD's will include the actual cost of the disk and the sleeve. 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.

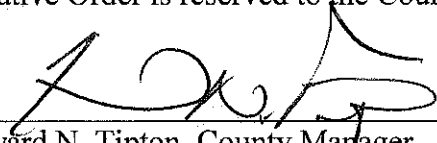
Postage:

Large orders or those to be mailed out of the county should be weighed and calculated individually, using www.usps.gov for postage rates.

5. An unusually large volume of copying requiring the documents to be sent to a copy service for reproduction are to be billed to the requestor based on the actual cost to the county.

V. RESERVATION OF AUTHORITY

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



Howard N. Tipton, County Manager

4/7/10

Date

APPENDIX A

COMMON EXEMPTIONS

Security Exemptions: Risk analysis information relative to security threats to data and information technology resources of an agency is confidential and exempt. §. 282.318(2)(a)(2), Fla. Stat.

Auditor General Audits: The audit report prepared by the Auditor General is a public record only after it has been finalized. § 11.45(4)(c), Fla. Stat.

Local Government Audits: Audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit is final when presented to the Board of County Commissioners. § 119.0713(3), Fla. Stat.

Bids: "Sealed bids or proposals received by an agency pursuant to invitations to bid or request for proposals" are exempt until such time as the agency provides notice of a decision or intended decision pursuant to § 120.57(3)(a), Florida Statutes, or within ten (10) days after bid or proposal opening, whichever is earlier. Any financial statement which an agency requires a prospective bidder to submit in order to pre-qualify for bidding or for responding to a proposal for a road or any other public works project is confidential and exempt from disclosure. § 119.071(1)(b) and (c), Fla. Stat.

Buildings/Blueprints: Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from disclosure regardless of whether the facility or structure was owned or operated by the County on or before the effective date of this exemption.

Personal Financial Records: Credit card numbers, bank account numbers, certain insurance information, are exempt. § 119.071(5)(b), Fla. Stat.

Security Interests: Records regarding ownership of, or security interests in, registered public obligations are not open to inspection. § 279.11(1), Fla. Stat.

Taxpayer Records: Except as otherwise provided in this section, all information contained in returns, reports, accounts or declarations received by the Department of Revenue, including investigative reports and information and letters of technical advice, is confidential and exempt. § 213.015(9), Fla. Stat.

Patient/Medical Records: Many types of patient/medical records or records reflecting medical treatment are exempt or subject only to limited disclosure. Be sure you know the specific exemptions that applies, however, before claiming it. § 119.071(4)(b), Fla. Stat.

Whistle-blower Investigations: The identity of a whistle-blower who discloses in good faith information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule or regulation and thereby creating and presenting a substantial and specific danger to the public's health,

safety, or welfare; or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, is exempt (some exceptions). While the name or identity of the individual disclosing this information is confidential, the initial report of wrongdoing received by the County is a public record since that information was received before an investigation began. § 112.3188(1), Fla. Stat.; 98-37, Op. Atty. Gen.

Civil Rights Investigations: Complaints and other records in the custody of a unit of local government which relate to a complaint of discrimination are exempt until a finding is made relating to probable cause, the investigation becomes inactive, or the complaint or other record is made a part of the official record of any hearing or court proceeding. Where an alleged victim chooses not to file a complaint and requests that records or the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt. § 119.0711(1), Fla. Stat.

Collective Bargaining Work Product: Work product developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt. § 447.605(3), Fla. Stat.

Attorney Work Product: Records prepared by or at the direction of an attorney for the County exclusively for purposes of imminent or pending civil, criminal or adversarial administrative proceedings and that to reflect a mental impression, conclusion, or litigation strategy or legal theory of the attorney or County are exempt until the litigation is completed. § 119.071(1)(d), Fla. Stat.

Social Security Numbers: **All social security numbers held by an agency are confidential and exempt. § 119.071(5)(a)3, Fla. Stat.**

Personnel File Exemptions: Personnel file exemptions include:

Employee/Officer	Exemptions
All Employees	Annuity or Custodial Account Activities, § 112.21, Fla. Stat.
Law Enforcement Officers	Complaints tiled against them and investigation of those complaints. § 112.S33(2)(a), Fla. Stat.
All Employees	Complaints of discrimination until a finding is made for probable cause, it becomes inactive, or is made an official record in the courts. § 119.0713(1), Fla. Stat.
All Employees	Certain criminal history information (e), relating to juvenile records. § 110.1127(3)(a), Fla. Stat.; § 943.0585(4), Fla. Stat., relating to expunction of criminal records
All Employees	Deferred compensation information § 112.215(7), Fla. Stat.
All Employees	Direct Deposit Information §. 119.071 (5)(b), Fla. Stat.
All Employees	Drug Test Results (not the consent forms, the results) § 112.0455(8)(u) and (11), Fla. Stat.
All Employees	Employee Assistance Program § 125.585, Fla. Stat.
All Employees	Examination questions and answer sheets of examinations administered by governmental entities for the purpose of licensure, certification or employment § 119.071(a), Fla. Stat.
Active or former Law Enforcement Personnel	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.

Active or former Correctional Officers	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Active or former Correctional Probation Officers	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Department of Children and Family Services personnel (whose duties include the investigation of abuse, neglect, exploitation fraud, theft, or other criminal activities)	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Department of Health personnel (whose duties are to support the investigation of child abuse or neglect)	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Department of Revenue (whose responsibilities include revenue collection and enforcement or child support enforcement)	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Local government personnel (whose responsibilities include revenue collection and enforcement or child support enforcement)	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.

Firefighters (certified 111 compliance with §633.35, Fla. Statutes)	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Justices of the Supreme Court, District Court of Appeal Judges, Circuit Court Judges, County Court Judges	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Current or former State Attorneys, Assistant State Attorneys, Statewide prosecutors or assistant Statewide prosecutors	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Current or former human resources, labor relations or employee relations directors, assistant directors, managers or assistant managers of any local government (whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties)	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
Current or former Code Enforcement Officers (including Animal Services & Enforcement Officers)	*Home address, telephone numbers, social security numbers, photographs; same info for spouses and children and places of employment of the spouses and children, names and locations of schools and day care facilities attended by the children. § 119.071(4)(d)1, Fla. Stat.
All Employees	Medical information § 119.071(4)(b), Fla. Stat.
All Employees	Ridesharing information that reveals the identity of a person who provided their name for ridesharing. § 119.071(5)(e), Fla. Stat.

All Employees	Social Security numbers of employees, current and former, and spouse and children Social Security numbers. <i>Does not include Social Security numbers of applicants who are not or do not become agency employees.</i> § 119.071(4), Fla. Stat.
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* **An agency that is the custodian of the personal information specified above but is not the employer of the officer, employee justice, judge or other person, shall maintain the confidentiality of the personal information only if the officer, employee, judge, or the employing agency of the designated employee submits a written request for confidentiality to the custodial agency. § 119.07(3)(i)4, Fla. Stat.**

If you have any doubt as to whether an exemption applies or require further explanation regarding exemptions, contact the County Attorney's Office.