

MIAMI BEACH CITYWIDE PROCEDURE	DATE ISSUED: JANUARY 2018 DATE UPDATED:	Page: 1 Of: 6	SEQUENCE NUMBER: CC.16.02
	SUBJECT: PUBLIC RECORDS PROCESSING		
	RESPONSIBLE DEPARTMENT: CITY CLERK		

PURPOSE:

This document reflects the City of Miami Beach's procedure pertaining to the processing of public records requests by all City personnel including elected and appointed officials.

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions and under supervision by the custodian of the public record or the custodian's designee (Florida Statute, Chapter 119.07(1)(a)).

GENERAL PROVISIONS

Public records shall be inspected and examined by any person desiring to do so, at any reasonable time under reasonable conditions, and under departmental supervision.

It is the policy of the City of Miami Beach that all public records shall be open for personal inspection by any person. Florida Statutes, Chapter 119, *Sections 119.07 and 119.071* address exemptions to Public Records Access, which exemptions must be specifically noted when claiming an exemption in response to a public records request.

Public Records Requests must be responded to in a timely manner. The Florida Supreme Court has stated that the only delay in producing records permitted under Florida Statute Chapter 119 "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt."

Each City Department shall assign a "Records Custodian" and a backup "Records Custodian" to interface with the Office of the City Clerk and coordinate the departmental retrieval of Public Records. If a departmental Records Custodian is not assigned it will be assumed that the Department Director and Assistant Department Director will assume the role.

Requests received for Police information shall be forwarded to the Police Department.

Requests received from any of the collective bargaining units shall be forwarded to the Office of Labor Relations in the Human Resources Department.

ELECTRONIC RECORDS

Electronic communications to or from municipal personnel are covered by the Public Records law, just like communications on paper. Accordingly, e-mails, tweets, texts¹, Facebook²

¹ Revised as of December 2017.

² In determining the applicable retention period, keep in mind that text messages created primarily to communicate information of short-term value may fall under the "Transitory Messages" record series. (City Department Record Custodians: See, *General Records Schedule GSI-SL for State and Local Government Agencies*). The term "transitory" refers to short-term value based upon the content and purpose of the message, not the format or technology used to transmit it. Accordingly, transitory messages are those "created primarily to communicate information of short-term value" and that are "not

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messages, Blackberry Pins, SMS communications (text messaging), MMS communications (multimedia content), instant messaging and any other electronic communications sent or received by City personnel (regardless of whether on a City or private computer/cellphone/other electronic device) in connection with the transaction of official business, are public records and must be disclosed upon request, subject to applicable statutory exemptions, and are further subject to the statutory restrictions on retention and destruction of public records. See, Florida Statute section 257.36(6), which specifically requires that a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the [State] Division of Library and Information Services (Division) of the Department of State³.

It is the nature of the record created rather than the means by which it is created which determines whether it is a public record. Thus, an electronic record created by City personnel in connection with the transaction of official business is a public record whether it is created on a publicly or privately owned computer/cellphone/other electronic device.

In order to ensure that the City's records contain all public records⁴, City personnel must, immediately after that public record's creation, transmit to their City email account copies of such public record, whether stemming from their private computer/cellphone/other electronic device.

PROCEDURE

1. A requestor can make a public records request to any City of Miami Beach personnel in writing, by telephone, by electronic communication, or in person.
 - **E-mail:**
To **request a public record** via e-mail, the requestor may send an email to researchrequest@miamibeachfl.gov

intended to formalize or perpetuate knowledge and do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt." Examples include interoffice communications such as meeting reminders, announcements of office events, and copies of formal agency announcements. (See *General Records Schedule GSI-SL for State and Local Government Agencies, V., Electronic Records, Electronic Communication and Transitory Messages*.) The retention requirement for transitory messages is "retain until obsolete, superseded or administrative value is lost."

³ Note: The Attorney General has specifically held that material on the City's Facebook page is presumably in connection with the transaction of official business and is thus subject to the Public Records Law (although in any given instance, the determination would have to be confirmed by the Office of the City Attorney).

⁴ The Department of State has recognized that retention periods for text messages and other electronic messages or communications "are determined by the content, nature, and purpose of the records, and are set based on their legal, fiscal, administrative, and historical values, regardless of the format in which they reside or the method by which they are transmitted." In other words, it is the content of the electronic communication that determines how long it is retained, not the technology that is used to send the message.

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- **Mail:**
To request public records by mail, the requestor may send the request to: City of Miami Beach, Office of the City Clerk, Attention: Public Records Request, 1700 Convention Center Drive, 1st Floor, Miami Beach, FL 33139.
 - **Telephone:**
To request public records via telephone, the requestor may call the Office of the City Clerk at 305.673.7411. The requestor may also contact the applicable Department directly.
 - **In Person:**
To request public records in person, the requestor may visit the Office of the City Clerk, located at City of Miami Beach City Hall, 1700 Convention Center Drive, 1st Floor, Miami Beach, FL 33139. The requestor may also request public records in person from the City Department serving as records custodian of documents sought.
2. City personnel receiving public records requests shall forward a completed Public Records Request Form to the Office of the City Clerk (along with a copy of any written public records request) either electronically to researchrequest@miamibeachfl.gov or in person. The transmittal of the completed Request Form to the Office of the City Clerk is for tracking purposes only. The City Department serving as records custodian of the requested records is responsible for responding to the request.
 3. Upon receipt of a public records request, the Office of the City Clerk will assign each request a number, and shall e-mail the request to the specific City Department's Record Custodian. All future correspondence regarding the request should reference the subject records request number assigned by the Clerk's Office.
 4. The Office of the City Clerk will maintain a log for all research requests with the following information: date request made; requestor's name, telephone number, fax number and email, documents requested, name of City personnel that the records request is assigned to and completed by, results of research, and status.
 5. The Department's Record Custodian will notify the requestor of the estimated time to process the request and related costs (see Cost Calculations below) in advance of producing the records.
 - It is important to make sure that the requestor is kept informed regarding the status of the research request. The City is not permitted to require full payment in advance of commencing production of records, but may request a deposit prior to such commencement when dealing with records requests that involve "extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both."

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- Once the City has accumulated the records, the requestor must provide payment in full before the City is required to produce the records. The City may also bill for any shortfall between any deposit that has been paid by the requestor and the actual cost of copying the public records when the copies have been made and the requesting party subsequently advises that the records are no longer sought.

PERSONNEL DUTIES RE: PUBLIC RECORDS REQUESTS FOR EMAILS/TEXTS/OTHER ELECTRONIC COMMUNICATIONS

Public records requests which seek inspection of City personnel's private emails/texts and/or other electronic communications require close examination in order to determine which such electronic communications are available for public inspection as having been "made or received in the course of official City business". In addition to the statutory exemptions from public disclosure, records or portions of records which are "private" or "personal" and which were not "made or received pursuant to law or ordinance" nor "created or received in connection with official business" of the City are not subject to disclosure. *State of Florida v. City of Clearwater*, 863 So. 2d 149 (Fla. 2003), and *Media General Operation, Inc. v. Feeney*, 849 So. 2d 3 (Fla. 1st DCA 2003), rev. den. 857 So. 2d 196 (Fla. 2003).

- In those instances in which a public records request has been made for City personnel's email/text/other electronic communication **on a City electronic device**, that subject City personnel shall review his/her emails/texts/electronic communications in order to determine which are "public records" and which are "personal" or "exempt" information, with subsequent review by that personnel's Department Director (and in the event any such "personal" or "exempt" information is that of the Department Director, said material must be subsequently reviewed by the City Manager's designee) in order to verify that said material is not subject to public disclosure.
- Public records requests seeking City personnel's private emails/texts/other electronic communications **from his/her private electronic device** will require each City personnel to review such emails/texts/other electronic communications and produce within a "reasonable time" any emails/texts/other electronic communications that constitute a "public record" (subject to allowable statutory exemptions)-such City personnel is encouraged to confer with the City Attorney pertaining to issues of compliance with the State's Public Records Law, Florida Statutes Chapter 119, and must, upon completion of document review, transmit to the City server those email/texts/other electronic communications that have been determined to constitute a public record.

MISCELLANEOUS RELATED PERSONNEL DUTIES

- The City may refuse to produce additional records if the fees for a previous request for records have not been paid by the requestor. *See Lozman v. City of Riviera Beach*, 995 so. 2d 1027 (Fla. 4th DCA 2008). Should this situation arise, the Office of the City Attorney must be consulted prior to the City Department's relaying such position to the requestor.

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2. The City must provide a copy of the requested record in the medium requested if the City maintains the record in that medium. The City is not required to furnish public records in a format other than the standard format routinely maintained by the City. If the City chooses to provide records in a requested format that is different than the standard format used by it, the requestor is responsible for the actual costs of converting or reformatting the information (in which situation, the City Department handling the records request should prior to reformatting the information, communicate with the requestor and obtain confirmation that he/she will assume such additional reformatting fees and charges).
3. Each City Department's Record Custodian will advise the Office of the City Clerk once a request has been completed, upon which event the Office of the City Clerk will update the Request Log and closeout the request as having been completed.

COST CALCULATIONS

Copies to be charged (if total exceeds \$1.00):

- .15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 ½ inches;
- An additional .05 cents for each two-sided copy;
- For all other copies, the actual cost of duplication of the public record⁵;
- \$1 per copy for a certified copy of a public record;
- Utilities, office expenses, travel time and storage retrieval fees for public records stored off-premises shall not be included.

Special Service Charge (in addition to copy costs)

The City shall, pursuant to statutory authorization set forth below, charge a "special service charge" for "extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both" pertaining to records requests of 1/2 hour⁶ or more:

- Pursuant to Florida State Statute 119.07: "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 personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, 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 personnel providing the service that is actually incurred by

⁵ Electronic public records are subject to statutory restrictions on retention and destruction of public records. See, Florida Statute section 257.36(6), which specifically requires that a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the [State] Division of Library and Information Services (Division) of the Department of State.

⁶ See, i.e., City of Miami Beach Resolution 2006-26361 and 2010-27497.

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the agency or attributable to the agency for the clerical and supervisory assistance required, or both”.

- For the purpose of public records requests made to the City of Miami Beach, the term “extensive” shall be defined as labor of 1/2 hour or more which will be charged at the flat rate of the employee’s base salary and employee benefits (fringe benefits not included) whose normal scope of duties include performing the function, even if an employee at a higher pay level actually did the work. A higher rate may be charged for requests that involve complex documents containing various exempt or confidential information--usually this will involve documents that have to be reviewed by staff from the Office of the City Attorney who possess the knowledge necessary to make decisions with respect to potential exemptions, in which situation the cost assessment shall be calculated in consultation with such personnel.

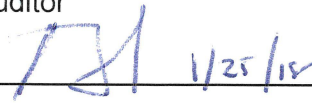
Questions regarding any portion of this procedure, should be directed to the Office of the City Clerk at 305.673.7411 or the Office of the City Attorney at 305.673.7470.

Prepared by:



City Attorney 1/25/18

Reviewed by:


Internal Auditor


City Clerk 1/25/18

Approved by:


City Manager

1/31/18
Date