

# PUBLIC RECORDS REQUEST POLICY

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## BEST PRACTICE PUBLIC RECORDS REQUESTS

**Background:** Clerks are required to provide public records in two capacities: as a court records custodian and as an agency subject to the public records laws in chapter 119 (the Sunshine Law). According to the Attorney General, the purpose of the Sunshine Law is to afford citizens the ability to see behind the curtain of government and remain involved in the processes that affect their lives.

[http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9GNQTW/\\$file/2014SunshineLawManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9GNQTW/$file/2014SunshineLawManual.pdf).

Sunshine Law violations can result in \$500 fine and attorney's fees and court costs, 119.12, 119.10(1)(a), Fla. Stat.

**Recommendations:** The Best Practices Committee appointed by the President of the Florida Court Clerks and Comptrollers recommends that every Clerk's Office adopts Public Records Request procedures to ensure the Clerks' Offices are protected by having policies in compliance with the legal requirements set out in the Florida Statutes and case law.

The Best Practices Committee urges the Clerks of the State of Florida to consider implementing the following best practices:

### DEVELOP PROCEDURES FOR:

1. This procedure describes how the Clerk of Court's Office will respond to requests from *members of the public* to inspect and/or copy public records that are in the custody of the clerk. For purposes of this procedure government agencies are not members of the public and requests from such agencies do not need to be handled under this procedure.
2. Public Record Defined – Any document or paper or electronic media, regardless of physical form, characteristic or means of transmission, including electronic mail, made or received in connection with official Clerk business are public records. This includes all calendars, notes and correspondence, including email correspondence, if the item is related to clerk business.
3. Records that are not Public Records – Personal notes, personal or “spam” emails, and those preliminary draft documents that are only for the author's use are not public records and are not required to be provided in response to a public records request.
4. Exemptions – There are many types of documents that are exempt from disclosure. A complete listing of exempt documents is available on line in an abridged version at <http://myfloridalegal.com/sun.nsf/manual>. If you have questions about whether a record is exempt check with the attorney for the clerk or appropriate personnel. Some examples are
  - a. Social security numbers.
  - b. Personal financial information, such as credit card and bank account numbers.
  - c. Data processing software subject to licensing agreement.
  - d. Sealed bids or proposals received in response to invitations to bid until notice of the decision or intended decision is given or 10 days after bid or proposal opening, whichever is earlier.
  - e. Security system plans, threat response plans, emergency evacuation plans, sheltering arrangements, and manuals for security personnel, emergency equipment, or security training.
  - f. Building plans or diagrams that depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure.

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5. Some records may be partially exempt, in which case the exempt information must be redacted and the balance of the non-exempt record provided. If extensive redaction is required, provide notice to the requestor that the records are being redacted. This will require input from legal counsel.
6. Determine how public records requests are disbursed to staff for COURT and NON-COURT records.

## PROCESSING PUBLIC RECORDS REQUESTS

7. **How Requested**—public records requests may be made by telephone, in person or by any written means. A specific form cannot be required. Requiring a record to be made in a particular format can be a violation and result in fines and legal fees. Chandler v. City of Green Acres, 140 So. 3d 1080 (Fla. 4th DCA 2014).
8. **Identification**—clerks cannot require a person to identify himself or herself or to state a reason for requesting public records in order to be entitled to inspect and copy them – unless required by law, or the records are confidential or entitled to exemption and the requestor claims entitlement to view the records.
9. **Clarify request**—to clarify the request, ask for it to be in writing, or offer to confirm the request by fax or email. If the person does not want to be identified or have the non-court-record request reduced to writing, simply enter the request in a log created for this purpose. Dade Aviation v Knight Ridder, 800 So. 2d 302, 305 n.1 (3d DCA 2001) (public records requests do not need to be in writing). AGO 80-57. If an oral request is broad, explain the cost of the request and the potential number of records encompassed by the request and inquire about narrowing the request. Judicial branch and court record requests must be reduced to writing per Florida Rule of Judicial Administration 2.420(m)(1). For non-court records, the request cannot be required to be in writing; for court records the clerk can require the request to be put in writing.
10. Consider using a public records request log for all non-written requests. Include the date of the request; the name of the requestor if identified; and a general description of the records requested.
11. **Record creation not required**—the Sunshine Law does not mandate that an agency create records to accommodate a request for information. In addition, an agency is not generally required to reformat its records to meet a requestor’s particular needs. Any such request should be referred to the public records contact person designated by the Department Supervisor. AGO 80-57 (does not have to give out information from records), AGO 92-38 (does not have to answer questions regarding records), In re Report of the Supreme Court Workgroup on Public Records, 825 So. 2d 889, 898 (Fla. 2002) (custodian of judicial records “is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request”), and Wootton v. Cook, 590 So. 2d 1039 (Fla. 1st DCA 1991). *See also* AGO 08-29 (agency not required to create list in response to request for information).
12. **Information about records not required**—a custodian is not required to give out information from the records of his or her office. AGO 80-57. The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. AGO 92-38. Cf. In re Report of the Supreme Court Workgroup on Public Records, 825 So. 2d 889, 898 (Fla. 2002) (the custodian of judicial records “is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request”).
13. **Copy to central contact person**—Determine whether you want to notify and provide a copy of any written request to a central public records contact person.
14. **Forward to correct responder**—If a request is not addressed to the appropriate department, the

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recipient should forward the request the same or next day to the appropriate employee and inform the Public Records Contact Person. Delays from passing record requests among departments may be considered unaccepted and result in litigation and sanctions.

15. The public records contact person may designate another employee to coordinate a response.
16. **Estimate charges**— Before responding to the request, make an estimate of the charges and notify the requestor of the amount of the charge in writing (if possible) and obtain advance payment before producing the documents.
17. **Special service charges**— If the response will require more than 15 to 30 minutes of staff time to comply, consult with the public records contact person to calculate the special service charge. The amount of service charge time that triggers must correlate to the amount of time an average response takes. This cannot be a rote or fixed time period, but one which can be justified by some finding supporting this average amount of time. Include this finding in your procedure, such as “the average public record request takes staff about 15 minutes to complete.”
18. If the request involves pending litigation involving your clerk’s office, consult with legal counsel or appropriate supervisor before responding to the request.
19. If the request is from a member of the news media, coordinate with the public relations officer.
20. **Confidential and Exempt records** — if the request appears to include confidential or exempt records, discuss the records request with legal counsel or appropriate supervisor. Failing to provide a record thought to be exempt, which is not exempt, can expose the clerk to liability, so consultation with counsel or appropriate personnel is crucial. Refer to your local procedures or policies to determine what is confidential or exempt.
21. **Redaction**— if redaction is required, redact the exempt portion of the document manually or electronically in a way that completely protects the exempt information before including in the response documents. It is best to address exempt information before providing the documents so that the party receiving the documents can raise any objection to the redaction. There is case law involving various agencies providing redacted documents or refusing to produce documents and then having to litigate the issue.
22. **Response time** — While the Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests, the custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. If the response cannot be promptly provided, send a letter by regular mail or email to the requestor acknowledging the request and explaining why additional time is needed. Provide a copy to the public records contact person before sending.
23. For large volume requests, coordinate with the public records contact person for viable records reproduction alternatives, such as sending records out for copying, using a scanning service, or uploading the documents to a web link. Any plan to use an outside service must incorporate security of the records.
24. **Electronic records**—any request for electronic records must be referred to the information systems director. The fee for providing computer generated information is the actual cost to the department for programming the information or report.
25. **Format of record**—if the requestor asks for the record in a particular format, and your office stores it in that format, you must provide it in that format. AGO 91-61. If you do not store it in that format, you have the option of providing in that format and assessing a fee to convert it, but it is not a

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requirement, so only convert the record to the requested format if it is practicable. For court records and other judicial branch records, the clerk can determine the form in which the record is provided. Fla. R. Jud. Admin. 2.420 (m)(2).

26. **Vague requests**—if a request is vague, a designated public records contact person can contact the requestor to clarify the request.
27. **Inspections**—there is no charge for routine inspections by a public records requestor. A routine inspection involves less than 15 or 30 minutes of staff time as pre-determined to be an average public records request response time. An employee must monitor all inspections, though such monitoring can be while conducting other routine tasks within close proximity to the inspection to prevent records from being lost or destroyed during the inspection. Records can only be inspected during regular business hours. A person requesting to scan the requested records can do this with their own scanner or can take pictures with camera. 119.07(3)(a), Fla. Stat. You cannot charge for these copies, AGO 82-23, but you can charge for clerk time to supervise the review of records, Section 119.07(4)(e)2., Fla. Stat., using the salary (plus benefits) for the lowest-paid person capable of performing the job, as long as that person is not doing other work and charging only for actual time. A prepayment of the estimate of time can be required. If the supervising staff person is doing other work, do not charge.
28. Fees must be paid in full prior to copying and producing the requested material. §119.07(4), Fla. Stat. Fees are payable by check or money order depending on your local office procedure.
29. CHARGES FOR PHOTOGRAPHIC COPIES
  - a. COURT and OFFICIAL RECORDS Documents: The charge for photographic copies of records from court files and official records is \$1.00 per page. §28.24(5)(a), Fla. Stat. Postage is an additional cost that can be charged.
  - b. NON-COURT/NON-OFFICIAL RECORDS: The charge for photographic process copies of NON-COURT/O.R. records is \$.15 per page and \$.20 per page for double-sided copies. §119.07(4)(a), Fla. Stat. Postage is an additional cost that can be charged.
30. CHARGES FOR ELECTRONIC DOCUMENTS—
  - a. Section 28.24(5) allows clerks to assess fees for photographic process. The opening paragraph of section 28.24 provides for the referenced services to be charged whether the service is rendered manually or electronically. Each clerk's office must determine whether to assess the \$1.00/\$5.00 per page fees allowed in 28.24(5) or assess the \$0.15/0.20 per page fees allowed in chapter 119 for electronic documents.
  - b. Regardless of what per page fee rate is chosen, each clerk's office must also set a policy on the delivery method of electronic documents. This can be using a disk, a thumb drive, email, etc. Unless other sufficient security measures are in place, consider requiring only clerk-provided media to prevent viruses or other electronic damage being done to the clerk's network infrastructure. For any physical media used, the charge for scanning and putting copies on the device is the per-page rate, plus THE ACTUAL COST OF THE DEVICE. Postage can be additionally charged. This cannot be an arbitrary flat rate. Discs and thumb drives can only be charged at the actual cost of the device, which means the actual cost of the material and supplies. Associated labor costs or overhead costs associated with such duplication cannot be assessed unless it is extraordinary. If it is extraordinary, be sure that the time is billed as extraordinary services, not as "labor" or "overhead." If copies or duplication must be outsourced, the actual cost from the outside company can be charged, but not the

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transportation or salary costs associated with getting the duplication accomplished. Unless a specific request for copies requires extensive clerical or supervisory assistance or extensive use of information technology resources so as to trigger the special service charge authorized by s. 119.07(4)(d), Fla. Stat., an agency may charge only the actual cost of duplication for copies of computerized public records. AGO 99-41.

31. State agencies are exempt from paying for copies of court records, see §28.345, Fla. Stat.; however there is no corresponding exemption for non-court records. Other agencies, state, county or city, requesting copies of records are subject to the copy charges established by this policy.
32. If paper copies are mailed, add the postage or shipping costs to the total charge. Yanke v. State, 588 So. 2d 4 (Fla. 2d DCA 1991) (prisoner must pay copying and postage charges to have copies of public records mailed to him); State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy, 636 So. 2d 1377, n.7, (Fla. 1st DCA 1994) (indigent person “is not relieved by his indigency” from paying statutory costs to obtain public records). Records custodian cannot charge for envelope and cannot charge “pull box fee” assessed by storage facility if the files or documents are in a commercial storage facility.
33. EXTENSIVE SERVICE CHARGE-The imposition of an extensive service charge is dependent upon the nature or volume of records requested, not on the cost to either develop or maintain the records or the database system. AGO 99-41 and AGO 2013-03 fn 5. Extensive research or service time must be billed at the hourly rate (plus benefits) of the lowest-paid person capable of performing the job. For example, if information technology services are required to compile data, bill at the hourly rate for the lowest-paid technology person who is capable of performing this job. An office can choose to have a higher-paying person actually do the job, but the requestor can only be billed at the lower rate. Establish the time that the average request takes to perform, and use that standard to set the minimum research time to assess extensive research/service services.
  - a. Example: Extensive research services shall be charged for research services that require more than 30 minutes of time. Average research time on a public records request is 15 minutes or less. Each request needing extensive services must be evaluated on the nature of the request to determine what level of staff is needed to review. For example, if only an attorney can do the review, then that rate can be used, but if the research can be handled by a lower-paid staff person, then that person’s hourly rate (plus benefits) must be used, regardless of who actually handles the request.
34. If a request asks for certification, add the additional certification charge per document to the usual copying and mailing costs authorized per section §119.07(4)(c), Fla. Stat. for non-court records and §28.24, Fla. Stat., for court records.
35. Provide a receipt when payment of the charge is made. If the final charge is less than the advance, refund the difference. If the final charge is more than the advance, request final payment before releasing the records.
36. When the records are provided complete the public records request log either manually or electronically. Such logs allow a supervisor to keep tabs on the timeliness of responses.
37. **Redaction**—If information is confidential, it cannot be released, see WFTV v School Board of Seminole County, 874 So. 2d. 48 (5th DCA 2004). Federal Law applies only if state is clearly subject to the provisions of the statute, State v Pace, 159 So. 679 (Fla. 1935). If information is exempt, but not confidential, agencies may allow access, but do not have to, see Williams v City of Minneola, 575 So. 2d 683 (5th DCA 1991), see also FSC unpublished PCA. A records custodian cannot charge for redaction.

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38. **Suggested Form** — a Public Records Request Log is attached as a sample log. Clerks might consider adopting an electronic public records request log that can be accessed by all staff.

