

CITY OF DELTONA
ADMINISTRATIVE POLICY AND PROCEDURE

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Subject: PUBLIC RECORDS		Approved by: _____ Jane Shang, City Manager _____ Date	

MISSION STATEMENT

Openness leads to a better informed citizenry, which leads to a better government and better public policy. Consistent with the premise that government, at all levels, exists first and foremost to serve the interests of the people, it is the mission and intent of the City of Deltona to, at all times, fully comply with and abide by both the spirit and the letter of Florida Statute Chapter 119, also known as the "Public Records Act."

DEFINING PUBLIC RECORDS

The Florida Public Records Act provides a right of access to inspect and copy City records with a few exceptions such as exempt material. There are penalties provided by law if City employees do not comply, including civil actions, fines, and attorney fees.

The City Clerk is charged with the responsibility of insuring that the City's public records program meets the mandates of the Public Records Act. **All employees** are responsible to ensure that records in their custody are accessible per Chapter 119.07 of the Florida State Statutes, which states that "every person who has custody of a public record shall allow inspection and copying of those records."

All records kept by the City of Deltona are public unless they are exempt from disclosure under Florida Law. All public records must be organized and maintained in such a way that they can be made available for inspection and copying.

A record is defined to include the following: A document in any format – paper, electronic (including, but not limited to, business e-mail and text messages, sent and received) – that is created, received by, or comes under the jurisdiction of the City of Deltona that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. Included are: documents, papers, letters, e-mails and text messages, sent, and received, maps, books, tapes/audio recordings, photographs, films, or other material.

REQUESTS THAT THE CITY IS NOT REQUIRED TO PRODUCE

Request for Information vs. Requests for Records: The City is required to provide access to public records; it is not required to provide information from the records. Example: A reporter wants to know how many employees earn over \$50,000 a year. The City has a file of annual salaries. The requestor should request to inspect the payroll file as the City is not required to give out *information* from that record.

Continuing Record Requests: The City is not obligated to provide records on a continuing basis to a requestor. Example: A requestor wants all records regarding Augusta Savage Arts & Community Center for the next two (2) years.

RESPONSE TIME

Public records are to be available for inspection during regular business hours with the exception of published holidays. Copies of public records must be made available within a reasonable period of time and under reasonable conditions. Reasonable time and under “Reasonable Conditions” takes into account the volume of records requested, the proximity of the location where the records are stored, and the necessity for any legal review and redaction of the records requested. The City must take into account its obligation to the citizens for the daily operation of City government when presented with a voluminous request. To request that Staff immediately cease normal business in order to fulfill such requests quickly would disrupt the normal workflow and cause disruption in services to the rest of the citizens. The accumulation of materials, research, and time involved must be weighed against the daily obligations to the taxpayers. Thus, “reasonable” must be defined by staff resources and workload, and not be an arbitrary timeframe.

It is the goal of the City of Deltona that all requests for public records should be acknowledged in writing and satisfied within a reasonable time following the office’s receipt of the request.

REQUESTS – HANDLING AND RESPONDING

All public records requests shall be submitted through the City Clerk’s office. The City Clerk’s office maintains a public records tracking system for processing the request. The City Clerk or his/her designee will acknowledge the request and forward it to the appropriate City Department.

HANDLING REQUESTS

The requestor does not have to put a records request in writing and does not have to provide his or her identity or the intended use of the requested public record. It is this office’s general policy that this information is not to be required to be given to the City in order to make public records request. However, the law does permit the office to ask for a written request, the requestor’s identity, and/or the intended use of the information requested, but only (1) if a written request or disclosure of identity or intended use would benefit the requestor by enhancing the office’s ability to identify, locate, or deliver the public records that have been requested; and (2) after telling the requestor that a written request is not required and that the requestor may decline to reveal the requestor’s identity and intended use.

No specific language is required to make a request for public records. However, the requestor must at least identify the records requested with sufficient clarity to allow the

office to identify, retrieve, and review the records. If it is not clear what records are being sought, the office must contact the requestor for clarification, and should assist the requestor in revising the request by informing the requestor of the manner in which the office keeps its public records.

Broad and/or General Requests: Agencies cannot deny a public records request based on the fact that the request is too broad or that it does not specifically identify the records requested. Therefore, in the absence of statutory exemption, an agency must produce the records requested regardless of the number of documents involved. (*Excerpt from Florida Public Records Handbook*). The fees for the copies and the administrative time to produce the copies (for extensive requests) shall be charged however.

In processing the request, the office **does not** have an obligation to create new records or perform new analysis of existing information. An electronic record is deemed to exist so long as a computer is readily programmed to produce the record through simple sorting, filtering, or querying. Although not required by law, the office may accommodate the requestor by generating new records when it makes sense and is practical under the circumstances.

When a public records request is received for e-mails or other records relating to a City Council Member or City employee, the City Council Member or City employee shall be notified that such a request was received. This notice and opportunity to review said records cannot unreasonably delay responding to the public records request.

In processing a request for inspection of a public record and to make certain original records are not taken or altered, public records may be inspected and examined by any person desiring to do so at any reasonable time, under reasonable conditions, and under the supervision of the City Clerk or his designee, i.e., a Department employee. For the purpose of this policy, "reasonable" time to provide access to public records is during the hours of Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding identified City holidays.

RESPONDING TO REQUESTS

Departments receiving the public records request will provide the City Clerk's office with an estimated cost and timeframe for retrieval. The City Clerk's office will notify the requestor of the estimated staff cost, time to fulfill the request and any copying charges.

For large requests, (those requiring more than \$25 in copy and retrieval charges), the City Clerk's office will require an advance deposit prior to beginning retrieval. The deposit will be a minimum of half of the estimated fee, it is non-refundable and will be put toward the total amount for the request. The remaining balance for the request is due at the time the request is completed.

1. Upon receipt of a public records request by e-mail, the Department shall acknowledge receipt by e-mail within two (2) business days. The Department

- shall also copy the City Clerk on the e-mail. For other requests, the Department shall forward the request to the City Clerk who will, in turn, contact the requestor or acknowledge it by other means such as a letter.
2. The Department shall respond to all public records requests in a reasonable time, taking into account the extent and nature of the request.
 3. If the requested public records are not within the Department, the City Clerk should be notified immediately by the Department. The City Clerk shall forward the request to the appropriate City Department, if known.

A copy of the most recent edition of the Florida Sunshine Laws manual is available via the internet located at <http://www.myfloridalegal.com/sun.nsf/sunmanual> for the purpose of keeping employees of the office and the public educated as to the office's obligations under the Florida Public Records Act, Open Meeting Act, records retention laws and Personal Information Systems Act. The Public Records Act is fully outlined in Florida Statute Chapter 119 at the following link: <http://www.leg.state.fl.us/Statutes>.

ELECTRONIC RECORDS

Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held device (such as a smartphone or tablet) are to be treated in the same fashion as records in other formats, such as paper or audiotape.

Public record content transmitted to and from private accounts or personal devices is subject to disclosure. All employees or representatives of the City are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedules.

E-mail, which is a public record but contains exempt information, should be produced but the exempt information must first be redacted. If in doubt as to whether an e-mail message is a public record or contains exempt information, the Department Head should contact the City Clerk who will consult with the City Attorney as necessary.

The record series entitled "Transitory Messages," found in the Florida Department of State General Schedule for Local Governments GS1-L, is designed to cover certain e-mail communications, as well as other information with short-term administrative value. The transitory message series is defined as follows:

Transitory messages consist of those records that are created primarily for the informal communication of information, as opposed to communications designed for the perpetuation or formalization of knowledge. Transitory messages do not set policy, establish guidelines or procedures certify a transaction, or become a receipt. The informal nature of transitory messages might be compared to the communication that might take place during a telephone conversation or verbal communications in an office hallway. Transitory messages would include, but would not be limited to: e-mail messages with short-lived or no administrative value, voice mail, self-sticking notes, and telephone messages. Retention is defined as retaining until obsolete, superseded, or administrative value is lost.

REQUESTS MADE ON BEHALF OF LITIGATION

For those public records requests that become and/or are made on behalf of litigation, the City Clerk must be notified in order to ensure backups are made to comply with requirements of law.

If litigation is pending or reasonably anticipated, records relating to that litigation should not be disposed of in any manner and the City Manager and City Attorney should be provided notice. The City Manager and/or City Attorney will provide notice when it is permissible to dispose of records relating to litigation.

DENIAL OR REDACTION OF RECORDS

If the requestor makes an ambiguous or has difficulty in making a request for public records, the request may be denied, but the denial must provide the requestor an opportunity to revise the request by informing the requestor of the manner in which records are maintained and accessed by the office. Examples of records that are exempt from the Public Records Law (Sec. 119.071, F.S.), as may be amended, are as follows:

- Social Security numbers of all current and former city employees;
- Medical records unless requested by a legal representative of the employee or court order;
- Home address, phone numbers, and photos of current or former Human Resources directors and any information regarding their spouse or children;
- The home addresses, telephone numbers, Social Security numbers, and photographs of active or former law enforcement, fire, and code enforcement personnel and places of employment of the spouse and children;
- Information contained in e-mail or other documents pertaining to active criminal investigations;
- Bank account numbers and debit, charge, and credit card numbers held by an agency;
- Any information that would identify or help locate a child who participates in government-sponsored recreation programs or camps or the parents or guardians of such child, including, but not limited to, the name, home address, telephone number, and Social Security numbers of such child;
- A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency) or prepared at the attorney's express direction, that reflects the mental impression, conclusion, litigation strategy, or legal theory of the attorney of the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings;
- Information or plans that can jeopardize the security of public buildings including construction plans, floor plans, and types of security systems;
- Data processing software obtained by the City of Deltona under a licensing agreement that prohibits its disclosure and which software is a trade secret, as

defined in s. 812.081, and agency-produced data processing software that is sensitive; although the designation of agency-produced software as sensitive shall not prohibit the City of Deltona from sharing or exchanging with another public agency; and

- Audit work papers and notes, until such time as the audit is final.

All public records requests involving personnel records will be directed to the Human Resources Director through the City Clerk.

Requests for documents which may contain information which is exempt from disclosure under Florida law may be delayed until the records can be reviewed and redacted as necessary. Because the Legislature amends the Public Records Law from time to time whether certain materials are exempt, if in doubt, check with the City Clerk's office.

Any denial of public records requested must include an explanation, including legal authority. If the initial request was made in writing, the explanation must also be in writing. If portions of a record are public and portions are exempt, the exempt portions may be redacted and the rest released. When making public records available for public inspection or copying, the office shall notify the requestor of any redaction or make the redaction plainly visible. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

Personal computers or personal e-mail accounts should not be used for City business as those records are considered public records and must be retained and accessible in accordance with State law. Any e-mails in connection with City business received in a personal e-mail account shall be promptly forwarded to your City e-mail account.

COPYING AND MAILING COSTS

A requestor may be required to pay in advance for costs involved in providing the copy. The requestor may choose whether to have the record duplicated upon paper, upon the same medium in which the public records is kept, or upon any other medium on which the office determines that the record can reasonably be duplicated as an integral part of the office's normal operations.

Copies must be paid for prior to receipt. Cash, personal check on a local bank, money order, or certified check should be made payable to the City of Deltona and shall be paid prior to the delivery of the records.

The following fees as prescribed in Sec. 119.07(4), F.S. will be charged for City of Deltona public records;

Paper Copies:	Fee
Each one-sided page (black & white) up to 8 ½ inches x 14 inches	\$.15
Each two-sided page (black & white) up to 8 ½ inches x 14 inches	.20
Each one-sided page (color) up to 8 ½ inches x 14 inches	.25
Each two-sided page (color) up to 8 ½ inches x 14 inches	.30
Each one-sided page (black & white) of 11 inches x 17 inches	.35
Each two-sided page (black & white) of 11 inches x 17 inches	.40
Each one-sided page (color) of 11 inches x 17 inches	.45
Each two-sided page (color) of 11 inches x 17 inches	.50
Certification of a public record (in addition to per page copy fee)	1.00
For all other copies, the actual cost of duplication of the public records shall be charged; such as special printing costs for documents that have to be sent out	ACTUAL COST
Real Estate Documents:	
Plats per page	ACTUAL COST
Maps per page	ACTUAL COST
Copy of Zoning Map, per sheet	ACTUAL COST
City maps & aerial photos – actual cost of materials, overhead & labor	ACTUAL COST
Other Media:	
Electronic Delivery Fee (in addition to per-page copy fee)	\$ 0
Audio Tapes, Recordings or CD/DVD (or the actual cost to the City, plus applicable administrative charges)	ACTUAL COST
Reproduction of DVDs	ACTUAL COST

Additional Fees:

Florida Statutes, § 119.07(4)(d) provides “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 shall 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 the agency or attributable to the agency for the clerical or supervisory assistance required, or both.”

For the purpose of this policy, “extensive clerical or supervisory assistance” is determined to be requests that require more than 15 minutes of cumulative time, which is counted from the receipt of the request. The Clerk will determine and deduct the 15 minutes of time from the Clerk’s portion of time spent on the request. All affected departments will provide the Clerk with a time estimate with no deduction of the 15 minutes. The City will use, as required, information technology, resources, or clerical labor to locate records, review confidential material, remove by redaction confidential material, or copy and re-file the requested material. For public records requests requiring more than 15 minutes, the requestor will be required to pay the hourly salary of the employee, director and/or consultant capable of doing the research, copying the records and/or supervising the requestor’s research. This hourly fee will begin after the first 15 minutes of clerical or supervisory assistance is completed. For requests estimated to be over \$25, a minimum deposit of half the estimated fee will be required. The deposit will be applied to the final cost of the public records request.

If materials are to be mailed, the actual cost of postage may be added to other charges indicated above.

The Code of Ordinances, Zoning Code, Land Development Regulations, and the Comprehensive Plan are available online or for purchase directly from Municipal Code Corporation at www.municode.com.

Redactions:

Requests for documents that require statutory redaction of certain confidential data are calculated at two minutes/page and at the hourly rate, including benefits, of the lowest paid person capable of completing the redaction.

Example:

100 pages x 2 (2 pages per minute) = 200 minutes ÷ 60 (minutes in an hour) = 3.34 x hourly rate

FEE COLLECTION

When all allowable fees/charges applicable to a particular public records request can be calculated in advance, they will be calculated and provided to the requestor before investing significant resources in completing the request. If the requestor accepts the cost estimate, the public records request will be filled; the requestor will then be notified that the request is completed and can be picked up and paid for at the cashier window.

When actual costs and extensive use fees cannot be immediately determined due to the nature of the request, an estimated cost for producing the records will be provided to the requestor along with an explanation that the actual cost may vary. A requestor

provides a 50% deposit based on the original estimate. If it is determined that the original estimate does not adequately cover the costs, the Clerk will cease working on the request and notify the requestor as to the new cost estimate. The requestor will agree to pay additional costs to bring the deposit up to the 50% requirement or all work on the request will cease. The requestor would then receive a refund as to any part of the original deposit that was not spent on attempting to fulfill the request or calculating additional costs. If the requestor accepts the new cost estimate and pays the additional deposit cost, the public records request will be filled; the requestor will then be notified that the request is completed and can be picked up and the balance owed paid for. If the actual cost is less than the estimate, the requestor will receive a refund of the difference.

If a deposit is required due to the request being over \$25, the requestor accepts the cost estimate, pays the deposit of half the estimated fee, the public records request will be filled, the requestor will then be notified that the request is completed and can be picked up and the balance paid for.

If a requestor makes multiple related requests in an attempt to evade these rules, the multiple requests will be aggregated and costs will be calculated as one request as to time spent and costs calculated under these policies.

For any and all requestors that have requested records and have not paid in full for those records, the Clerk will not process another public records request until the outstanding balance is paid in full.

No sales tax is charged for a public records request.

COLLECTION OF RECORDS

The City Clerk's office will hold a completed records request and associated documents for up to 10 calendar days to give the requestor adequate time to pick up the records or make arrangements for the delivery of the records. If the copies of the requested records are not picked up within 10 days following notification to the requestor, they will be destroyed and the original documents will be returned to the files.

MANAGING RECORDS

The City of Deltona's records are subject to records retention schedules. The office's current schedules are available at City Hall, 2345 Providence Blvd., Deltona, FL 32725, a location readily available to the public as required by Chapter 119, Florida Statutes.