

Series: Operating Procedures **COA:** RPM 8
CFOP: 15-4
Procedure Name: Requests for Public Records
Procedure Number: OP-1122
Revision #/Date: NA
Effective Date: 1/15/09
Applicable to: All CBCB Staff and Contract Providers

SUBJECT: Responding to Requests for Public Records

PURPOSE: To outline the procedure for responding to requests for records as directed by Florida law.

PROCEDURE:

References

Florida Statutes: Chapter 119
CFOP 15-4
CBCB Policies/Procedures: GOV-203, RQ-504, OP-1119

Definitions

Public records are "...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other materials, regardless of physical form, or characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(1), Florida Statutes (1995).

The Florida Supreme Court interprets the definition of public records very broadly to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.

- (1) Personnel records are open to inspection unless exempted by law. This includes applications, resumes, third-party communications (e.g., references), salary information, grievance records, and travel vouchers. The courts have rejected claims that release constitutes an invasion of the employee's privacy. Those items which are deemed confidential are redacted and the document is released.
- (2) There is no "unfinished business" exception to public records inspection and copying requirements. Any agency document circulated for review, comment, or information (including memoranda, drafts, or proposals) is a public record regardless of whether it is marked "preliminary" or "working draft". A non-final document need not be communicated to anyone in order to constitute a public record; your "personal" notes are public records if they perpetuate or formalize knowledge of some type.

- (3) Section 119.01 also notes that "...automation of public records must not erode the right of access to those records." One Florida court has held that "information stored in a computer is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet." In answering a question as to whether e-mail messages are public records, a recent attorney general opinion states: "...the fact that information made or received...in connection with official business is electronically made or received would not appear to alter its character as a public record..." Therefore, all materials, *regardless of form*, are open for public inspection unless the legislature has specifically exempted them from disclosure.

Exemptions to the Public Records Law

1. State and federal law exempts certain categories of documents from disclosure under the public records law. The exemptions recognized by Florida law are found in section 119.07, F.S. The exemptions which apply most often to department records include client specific information.

Some other exemptions include, but are not limited to:

- Social security numbers contained in agency employment records
 - Home addresses and telephone numbers, photographs, and family information of certain personnel (including Children and Families investigators)
 - Medical information (except with written permission)
 - Retiree names and addresses, if compiled, or in aggregate or list form
 - Reports of abuse of children, disabled adults, or elderly persons and materials generated as a result of the report
 - Documents prepared for collective bargaining negotiations
 - Records identifying participants in annuity or custodial accounts, or deferred compensation plans
 - Drug test results
 - Employee assistance program records
 - Internal investigations, whistle-blower investigations, or discrimination complaints (until investigation is completed and a finding made)
 - Examination questions and answer sheets for the purpose of licensure, certification, or employment (except an individual may review, but not copy, the individual's own exam questions and answers)
 - Ridesharing information
 - Data processing software (under licensing agreement or, if produced by the agency, "sensitive")
 - Sealed bids or proposals (until notice of a decision or no later than 10 days from opening)
2. Before any document is released pursuant to a public records request, any exempt information must be redacted or deleted. If there is any doubt as to whether a record is exempt, contact your district/central legal office.

Who May Request a Public Record

Section 119.01(1), F.S., declares: "[i]t is the policy of this state that all... state records shall be open for personal inspection *by any person*" (emphasis added). Reporters, attorneys, union representatives, public employees, and other citizens all have the same right of access to public

records. A person need not give a reason for making a public records request and need not have a "legitimate" reason to access a public record.

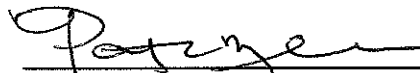
Procedure for Responding to Requests

1. Requests may be made in writing or orally. All public records requests should be referred to the CBC of Brevard CEO or designee. The CEO is responsible for appointing one or more persons to gather the requested documents and then either arranging a time for inspection of the documents or making copies available to the requester. Documents, including e-mail, that do not fall within the definition of a public record need not be produced. Records, in whatever form, which are public records but contain exempt information must be produced, but the exempt information must first be deleted or redacted. If in doubt as to whether a document or e-mail message is a public record or contains exempt information, the supervisor should contact the district/central legal office.
2. CBC of Brevard may charge a requester to duplicate a public record. In addition, if copying the public records requires *extensive* use of information technology resources or clerical and/or supervisory assistance, CBC of Brevard may assess a reasonable service charge based on the actual incurred costs. The allowable copying costs are set forth in section 119.07, F.S. CFOP 15-9. An estimate of the charges must be given to the requester and approval obtained prior to responding to the request. All charges must be collected before producing the documents. See CFOP 15-9, Charges for Providing Copies of C&F Records or Publications, for complete information about charging for copies.
3. Rules or conditions of inspection (e.g., an automatic waiting period or an arbitrary time period for inspection) which operate to restrict or circumvent a person's right of access cannot be imposed. The only delay permitted is the reasonable time allowed to retrieve the record and redact those portions that are exempt.

Procedure for Photocopying Records Containing Redacted Material

Xerographic copying often produces "bleed through" resulting in the portions sought to have been obliterated remaining readable when held up to a light source. To eliminate "bleed through", the records must be copied and the portions of the records being blacked out must be thoroughly blackened out. The blacked out copies are then recopied, whereupon the blacked out portions are not subject to being read even when subjected to background light.

BY DIRECTION OF THE CHIEF EXECUTIVE OFFICER:



DR. PATRICIA NELLIUS-GUTHRIE
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CBC of Brevard, Inc.

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