



BOARD OF COUNTY COMMISSIONERS

**County Attorney's Office**  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

TO: Jim Liesenfelt, Interim County Manager  
THRU: Morris Richardson, County Attorney  
FROM: Christine Reilly, Senior Law Clerk  
SUBJECT: Citizen Efficiency and Effectiveness Recommendation #2026014

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CEER #2026014, titled Brevard County Public Records Need to be Put on the Internet, was received by the County from Ms. Sarah K. Hodge.

**Citizen Statement:**

"I would like to see Public Records put on the Internet for all to see without the cost and delays when trying to get them from the County or Cities. Sometimes you can not get them before the item is voted on. Many years ago Florida Today had to pay \$30,000 to get records from the School Board. Florida Today paid it to get the records and then sued and won in Court and got all their money plus fees back. The School Board Sued to stop them and the Taxpayers had to pay for the School Board's lawsuit fees too. All wasted Taxpayer money because they did not want to release Public Records! The Clerk of Court has its records on the Internet. Why can Brevard not do the same for the Public? It would save Staff time and the huge costs. People have to pay to get records. There is a problem with getting records in advance of meetings and sometimes items are voted on before the records are obtained by the Public."

**Citizen Recommendation:**

"I recommend that Public Records are accessible to All the Public on the Internet. The benefits are that it would reduce cost of Staff having to obtain the records for the Public requests, reduce delays for the Public in receiving the information and being informed for the meetings, proper notice of Agenda Items to the Public that they need to speak to at the County Commission Meetings and other County Meetings, Possible Lawsuits from

the Public that did not have access to Their Public Records before the Items are voted on before they have had the opportunity to speak for or against the Item on the Agenda.”

**Staff Analysis:**

Brevard County’s response to public records requests is governed by Chapter 119, Florida Statutes (Florida’s Public Records Law) and Brevard County Administrative Order 47, Coordination of Public Records Requests.

Section 119.011(12), Florida Statutes, defines “public records” as follows:

“Public records” means 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 any agency.

Also see Section 119.07(4) which indicates that the furnishing of public records is made upon payment of a fee, prescribed by law, or if a fee is not prescribed by law, a fee which is in keeping with the provisions of Section 119.07(4), Florida Statutes.

The determination of what constitutes a public record is a question of law. See *State v. City of Clearwater*, 863 So.2d 149, 151 (Fla. 2003). In many instances, this is not a simple analysis. “It is impossible to lay down a definition of general application that identifies all items subject to disclosure under the [Florida Public Records Act, Chapter 119, Florida Statutes].” *Shevin v. Byron, Harless, Schaffer, Reid & Assocs.* 379 So.2d 633, 640 (Fla. 1980). “Consequently, the classification of items which fall midway on the spectrum of clearly public records on the one end and clearly not public records on the other will have to be determined on a case-by-case basis.” *Id.*

“A public record is ‘any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.’” *Id.* For instance, “the handwritten notes of the consultant ... made during or shortly after his interviews with job prospects, are merely preliminary materials intended to aid the consultant when he later formalized the knowledge gained during the interviews” and therefore are not public records. *Id.* at 641. In addition, unused ballots do not fit Florida’s definition of a public record because they do not “perpetuate, communicate, or formalize knowledge.” *Rogers v. Hood*, 906 So.2d 1220 (Fla. 1<sup>st</sup> DCA 2005). Similarly, drafts are not usually considered public records, unless they have been shown to others. *Times Pub. Co. Inc. v. City of St. Petersburg*, 558 So.2d 487 (Fla. 2<sup>d</sup> DCA 1990).

To make all County public records available on the internet would involve requiring every member of the County staff to review on a continuous basis every communication that they create or receive to determine if it qualifies as a "public record."<sup>1</sup> This would almost certainly result in frequent staff inquiries to the County Attorney's Office, requiring significant staff and attorney time to review countless documents that may never be the subject of a request or search by any member of the public.

In addition, each member of the County staff would need to review every document he or she creates or receives to see if it is subject to a provision of confidentiality or exemption under the Public Records Act and prevent the record from being placed on the internet or redact it accordingly. Statutory exemptions are extensive and change frequently.<sup>2</sup> On one day a public record placed on the internet would meet the requirements of the law; however, on a later day, information contained in the same public record might be deemed confidential or exempt. This means that County staff would need to constantly review all of the records placed on the internet for continued compliance with then-current law.

Further, every document uploaded to the internet would need to be formatted to comply with the Americans with Disabilities Act. This process would considerably impinge on the County staff's ability to complete its work in a timely fashion, thereby affecting the ability for all departments to work efficiently. To make all County public records available online would also require a new database requiring multiple operating systems, and the new database would need to be designed to be user-friendly. In addition, optical character recognition would need to be performed on scanned paper documents for a search function to be able to read the documents.

No matter how user-friendly a new database might be, if a user of the new database misspelled a search term, didn't know the proper acronyms for a search, or used abbreviations, this might lead to a response of "no results" to the user's inquiry, even when there were public records responsive to the search. When a public records request is currently made to Brevard County, the person responsible for making sure all the relevant records are produced notifies the department(s) that would have the records. As needed, questions are asked of the department(s) to ask if certain entities have changed,

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<sup>1</sup> This is not the current process, as every public record is not placed on the internet. A new process would need to be created to ensure that all staff would have considerable expertise in Florida law relating to what is a public record, what records are exempt or confidential, and what information should be redacted if a record is determined to be a public record. Currently, it is the records custodian in each department who receives in-depth training regarding public records.

<sup>2</sup> According to the First Amendment Foundation, there are over 1,100 exemptions to Florida's Public Records Act. In 2022, lawmakers filed over 50 bills adding new exemptions to the state's public records law.

what acronyms might need to be searched, or if a certain entity is now known by a different name. Therefore, the staff person processing the request would have additional information to complete a more thorough and successful search than would a public records requestor entering search terms on their own into a website search engine.

The Herculean effort and corresponding expense required to place all of its public records on the internet would not even relieve Brevard County of its current obligation to respond to public records requests. In *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d. 332 (Fla. 1<sup>st</sup> DCA 2015), a requestor initially asked for electronic access to certain public records. He then changed his request to one for actual paper copies of the public records, due to his alleged difficulty with the website. When the agency only referred the requestor to the website, this was considered a violation of the Public Records Law. As the court in *Lake Shore* stated, "Access to public records by remote electronic means is merely 'an *additional* means of inspecting or copying public records.' §119.07(2)(a), Fla. Stat. (2013) (emphasis added). This additional means of access, however, is insufficient where the person requesting the records specifies the traditional method of access via paper copies." *Id.* at 333.

Nor would placement of public records on the internet necessarily allow Brevard County to greatly reduce its current physical or electronic storage requirements. An agency must provide a copy of a public record in the medium requested, if the agency maintains the record in that medium. §119.01(2)(f), Fla. Stat.; *see also* Op. Att'y Gen. Fla. 91-61 (1991) (custodian must provide a copy of computer disk in its original format; a typed transcript does not satisfy the requirements of this statute.) Placing all public records on the internet as proposed by CEER #2026014 would require the County to maintain many records in an additional, internet-friendly and ADA-compliant format, while still maintaining the record in its original medium.

It should be noted that the Clerk of Court does not place all "its records on the Internet," as asserted in the citizen's statement. Rather, the Clerk makes specific documents that are recorded in the Official Records of Brevard County (e.g., plats, deeds, mortgages, liens, etc.) and certain records from court files available online. If the citizen wished to see internal memos or emails between Clerk of Court staff members, for example, they would have to make a public records request to the Clerk's Office.

**Staff Recommended Action:**

It is recommended that the Board of County Commissioners reject CEER #2026014 because it does not enhance the effectiveness and efficiency of County Government as contemplated by Section 2.9.10 of the Brevard County Home Rule Charter.

CC: Frank Abbate, County Manager

## Horst, Rachel

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**From:** CEER@brevardfl.gov  
**Sent:** Tuesday, January 7, 2025 3:33 PM  
**To:** Horst, Rachel  
**Subject:** A new CEER Recommendation has been submitted as ID #2026014

### Recommendation # 2026014

Dear CEER Administrator,

Speak Up Brevard Recommendation ID #2026014 has been submitted. Please login to the CEER Application to start the recommendation evaluation workflow.

#### Contact Information:

##### Group/Organization

<b>Name</b>	Sarah K Hodge
<b>Address</b>	390 SANDERS LN, MERRITT ISLAND FL 32953 3295
<b>Phone</b>	(321) 452-3340
<b>Email</b>	hodge_sarah@yahoo.com
<b>Alternate Email</b>	hodge_sarah@yahoo.com

#### Recommendation Information:

<b>Recommendation ID</b>	2026014
<b>Recommendation Title</b>	Brevard County Public Records Need to be Put on the Internet
<b>Areas Affected</b>	
<b>Department Affected</b>	
<b>Current problem</b>	I would like to see Public Records put on the Internet for all to see without the cost and delays when trying to get them from the County or Cities. Sometimes you can not get them before the item is voted on . Many years ago Florida Today had to pay \$30,000 to get records from the School Board. Florida Today paid it to get the records and then sued and won in Court and got all their money plus fees back. The School Board Sued to stop them and the Taxpayers had to pay for the School Board's lawsuit fees too. All wasted Taxpayer money because they did not want to release Public Records! The Clerk of Court has its records on the Internet. Why can Brevard County not do the same for the Public? It would save Staff time and the huge costs People have to pay to get records. There is a problem with getting records in advance of meetings and sometimes items are voted on before the records are obtained by the Public.
<b>Recommendation</b>	I recommend that Public Records are accessible to All the Public on the Internet. The benefits are that it would reduce cost of Staff having to obtain the records for the Public requests, reduce delays for the Public in receiving the information and being informed for the meetings, proper notice of Agenda Items to the Public that they need

to speak to at the County Commission Meetings and other County Meetings, Possible Lawsuits from the Public that did not have access to Their Public Records before the Items are voted on before they have had the opportunity to speak for or against the Item on the Agenda.

**Attachments**

No Documents were attached.

Please do not reply to this e-mail, as it will go to an unmonitored mailbox.