



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson Way
Viera, FL 32940

Legislation Text

File #: 1140, Version: 1

Subject:

Board Direction regarding Public Records Policy/Procedure, Dist. 2

Fiscal Impact:

Reduced costs to County (see summary explanation and background) and increased preservation of taxpayer dollars

Dept/Office:

District 2

Requested Action:

Seek Board direction on potential changes to AO-47 and BCC-22

Summary Explanation and Background:

BCC-22 provides the County Commission’s policy on the County’s record management system. AO-47 outlines the County staff procedures with regard to processing public record requests. Revisions to both BCC-22 and AO-47 were placed on the County Commission Agenda by the County Attorney’s Office for the May 21, 2019 meeting and again on the July 23, 2019 meeting as part of the routine sunset review process. Prior to both meetings, the items were removed from the agenda for consideration of additional changes.

Over the past several years, there has been a significant increase in the number of public record requests being processed by Brevard County staff as illustrated in the chart below.

YEAR	REQUESTS
2016	845
2017	1057
2018	1147
2019 (to date)	1373

This change represents approximately a 62% increase in requests from 2016 to 2019 (to the date this document was initially drafted). Importantly, these numbers only reflect those requests that are entered into the tracking system and do not represent all requests made to County staff. Many requests are fulfilled by county staff without use of the tracking system. This trend of increasing requests is only likely to continue and, as the number of requests increase, the staff time necessary to respond in a timely and efficient manner increases as well.

The current system set up by the County to respond to public records requests requires each department to designate a records custodian, who, in addition to his/her regular job duties, is required to

respond to public record requests for documents maintained in his/her department. If the records requested are maintained in multiple departments, the records custodian for each department assists to respond to the request. Departments with fewer employees may be disproportionately impacted by an increased volume of public records requests.

Under Chapter 119, a public agency has a statutory duty to provide access to public records and can impose statutorily authorized fees for copies and, under certain circumstances, a service charge, as designated by Section 119.07(4), Florida Statutes solely to cover actual costs. Currently, the County's policy implements the Statute with regard to copying charges and establishes parameters to charge a service fee when a response requires extensive staff time. "Extensive staff time" is defined in AO-47 as "any time after the first one-half hour that it takes to research, gather or process the public records request, as well as the time spent with the requestor to review the records."

Given the significant increase in the number of public record requests received by the County and the resulting increase in staff time associated with responding to the requests, consideration should be made to revise the current policy and procedure to ensure continued efficiency in responding to all requests for public records. Some potential changes to consider are as follows:

- Changing the definition of "extensive staff time" to any time after the first fifteen minutes to research, gather or process the public record request as well as the time spent with the requestor to review the records.

- Amend policy, as memorialized in applicable governing documents, to aggregate cumulative public record requests to avoid exploitation of a potential loophole in the waiver of the initial fifteen (or thirty) minutes of staff time expended in processing public record requests.
 - For instance, assume the County receives a request pertaining to 1-10000 Any Street and the County estimates the time to process this request amounts to one hour. If the requestor narrows down the request to four separate requests (e.g., an initial request for 1-2500 Any Street, a second request for 2501-5000 Any Street, a subsequent request for 5001-7500 Any Street, and a final request for 7501-10000 Any Street), if the requests are not treated as cumulative and, accordingly, as a single request, these four requests could be processed at no charge to the requestor despite requiring at least as much staff time to process as a one-time request for the very same information which would have resulted in charges being incurred by the requestor.

 - Indicia of a request being cumulative include: (1) a substantially similar topic, subtopic, and/or target contemplated by the subsequent request; (2) an overt expansion of scope of the original request (e.g., substantially similar records sought

over a broadening and/or continuing range or set of targets); (3) the duration of time which has passed between the most recent prior request and the subsequent request(s); (4) lack of an ability to verify that the requestor is, in fact, distinct from the original requestor (e.g., throwaway email accounts used for initial and/or subsequent request(s)); and any other articulable basis for concluding that a subsequent request is cumulative and should be treated as an expansion of the preceding request.

- In the event a request requires “extensive staff time” to respond, the full estimated cost of such time be paid in advance of processing the response to the request instead of 50% of the estimated cost (which is the County’s present policy).
- Change the hourly rates for “extensive staff time” to reflect the actual cost of the staff member(s) who are working on the response to the request. This would be the specific staff member’s hourly rate including the cost of benefits. This would eliminate the current fee rate schedule which has a blended or averaged professional rate (\$16.26/hr) and an administrative rate (\$9.44/hr).
 - o As many individuals consider service on the Board of County Commissioners not to be a full-time job, for purposes of setting a uniform hourly rate for all County Commissioners, County Commissioners shall be deemed to work twenty-hour work weeks for computation of hourly rates in relation to a public record request.
- Include language within AO-47 and BCC-22 that emphasizes that staff and/or record custodians shall not create new records in order to respond to a public records request. This directive is routinely communicated during public record training provided by the County Attorney’s Office; however, it may be prudent to include it in the policy and procedure as well.
- Include language, as appropriate, to better ensure that staff takes all appropriate measures to ensure that records of employees entitled to exemptions pursuant to § 119.071, Fla. Stat., shall not be produced until such time as any and all exempted content is lawfully redacted.
 - o An employee’s written notice of entitlement to such exemption to Human Resources and/or the County Attorney’s Office shall be treated as indicative of an entitlement to such exemption unless and until such time as the County Attorney’s Office has reviewed the notice and determined that it is statutorily insufficient. Staff

may, however, require such notice be in a particular or specified format as may be permissible under applicable law.

These proposed changes for consideration are intended to allow staff to continue processing public record requests in an efficient manner and ensure that the County's **actual cost(s)** associated with responding to the request(s) is/are reimbursed in full compliance with applicable law. Implementation of the aforementioned recommended changes is in keeping with our fiduciary duty to be good stewards and watchdogs of taxpayer funds and will better ensure that actual costs associated with production of public records be defrayed primarily by the requestor as opposed to being borne, in large part, by taxpayers who have nothing whatsoever to do with particular public record requests and who do not stand to benefit from them.

Clerk to the Board Instructions: