




To: City Commission

From: Stephanie M. Throckmorton, Assistant City Attorney for the City of Coral Gables

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

RE: Legal Opinion Regarding Public Records and Information Request Policy

Date: September 1, 2017

Public Records and Information Request Policy

1. Overview

- a. **Role of the Clerk.** The City Clerk is the official custodian of all City records in the City.
- b. **State laws governing access to public records.** Article I, section 24 of the Florida Constitution and Chapter 119, Florida Statutes.

2. **Purpose.** The City of Coral Gables strives to be fully transparent and accepts the principles set forth in Chapter 119, Florida Statutes, the Public Records Law. In support of those principles the City incorporates the following policies to inform City staff about implementation of and compliance with the Public Records Law within the City.

3. Definitions.

- a. **Public Record-** All documents, papers, letters, maps, books, tapes, photographs, films, sound recording, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business.
- b. **Extensive Use-** When the nature of volume of the public records requested to be inspected, examined or copied requires the use of the City's information technology resources and/or labor time required of clerical or supervisory employees exceeds 30 minutes, the particular use of such resources is considered extensive.
- c. **Information Requests-** Requests for specific information, data, or sets of questions that are not necessarily answered with the production of an existing public record.

4. Procedures.

- a. **Form of Request.** The City should accept requests for public records in writing, by email, through GovQA, by telephone, by fax, or in person. The City may ask for information needed to complete or clarify the request made but the City cannot request a customer to use a particular form or medium to request records, and may not require that a customer provide identifying information.
 - i. A request for documents or information from a City Commissioner is assumed to be made in the Commissioner's official capacity unless otherwise stated and is thus not considered a public record request.
- b. **All Requests**
 - i. Acknowledge the request and forward to publicrecords@coralgables.com or enter directly into Gov QA (Police and Fire have separate procedures please contact those departments when receiving requests to be fulfilled solely with Police or Fire).
 - ii. The City Clerk's office will enter the request into Gov QA and tag the appropriate departments. If clarification is needed the Clerk's office will contact the customer to request clarification. Requests need to be read carefully to insure that all potentially responsive departments and individuals are "tagged" in a request.
 - iii. When an employee receives a Gov QA activity notification, they should contact the City Clerk's office with any questions regarding the request.
 - iv. Any contact with a customer, especially any clarifications or changes to the request, should be entered in Gov QA so that all departments have access to the updated information.
 - v. Departments should do a first round of redaction for information they know to be confidential or exempt. See Appendix A for common exemptions and redactions
 - vi. If documents are requested to be produced electronically, and are available electronically, please upload them to Gov QA in their original format. Large blueprints, pamphlets etc. may need to be produced in physical copies with an extra associated cost.
 - vii. All requests are to be addressed in the order received unless the customer is requesting documents in the public interest, in order to appear before a City Commission, Board, or Committee meeting set in the near future, or the customer requires the documents for a verified court or official deadline. The City Clerk and City Attorney shall have the authority to expedite requests when necessary.
- c. **Extensive use request.** The extensive use policy and procedure follows Florida Statutes 119.07(4) for the purpose of recovering costs incurred for extensive use of staff labor or information technology resources as allowed by Florida law.
 - i. If it appears that a request will be extensive, i.e. require more than 30 minutes of staff time to produce, the Clerk's office will first ask each responsive department to provide a time estimate in Gov QA prior to producing the records. Estimates should be as accurate as possible and entered into Gov QA as soon as possible.

- ii. Once an estimate is produced, if the customer would like to proceed with the request the Clerk's office may require a deposit. The Clerk's office shall use their discretion in determining if a deposit is needed, i.e. a \$800 estimate versus an \$8 estimate.
- iii. Once an estimate is produced the actual cost may vary, but shall not exceed the original estimate by more than an additional 25%. Staff should ensure accurate estimates in order to comply with this policy.
- iv. Once a customer either pays a deposit or lets the Clerk's office know they would like to proceed the Clerk's office will add activities for each responsive department to produce responsive documents. Departmental employees will add the actual time needed to produce those records in to Gov QA so as to accurately charge the customer.
- v. Once all responsive documents have been reviewed and appropriately redacted by the Clerk's office the Clerk's office will inform customer of the final fee amount. No documents shall be released until payment is received.

d. Requests involving email

- i. In order to provide an accurate estimate of the time needed to provide responsive emails, IT may need to first run a search on requested search terms in order to determine the potential number of emails which will need to be reviewed. There is no charge for putting together an estimate for responsive emails.
- ii. If a customer proceeds with a request for emails, IT will gather all responsive emails in a document review system for review and redaction by the City Clerk's office. If this requires extensive use of staff time, appropriate fees will be charged.

e. Legal Questions

- i. Any legal questions regarding appropriateness of redactions, questions about what documents may be responsive etc. shall be directed to the City Attorney's office.

f. Subpoenas

- i. All subpoenas should be directed to the City Attorney's office.

5. Record Retention. If the City is in possession of a responsive document which has already met retention, we must provide the document as responsive. The City Clerk's office has assigned various Departmental employees with the task of insuring compliance with records retention.

6. Public Record Exemptions

- a. The City is responsible for protecting confidential information as well as other information prohibited from public inspection or copying under the Public Records Laws. Exemptions can be found in the Florida Statutes.
- b. Departments should become familiar with the applicable Public Records exemptions and which items in their responsive documents may be exempt. See Appendix A for common exemptions and redactions.

- c. When the City asserts an exemption when providing a redacted document or refuses to provide a document the City must, upon request, provide a basis for the exemption and its statutory citation.

7. Fees

- a. **Extensive Use Fees.** A public record request which takes less than 30 minutes to compile and review has no fee associated with it. After 30 minutes the City will charge \$5 per 15 minutes. The extensive use charge for requests taking over 30 minutes will be computed to the nearest quarter hour exceeding the first 30 minutes. Extensive use fees shall not be randomly or automatically applied. Rather, each public records request must be evaluated to determine if extensive use charges are warranted.
 - i. The City Clerk and City Attorney have discretion regarding extensive use fees when providing documents to a customer who intends on appearing before the City Commission, City Boards, or City Committees, or regarding a matter of great public interest.
- b. **Copying fees.** If a customer requests printed copies of documents they will be charged as follows:
 - i. Paper Copies- paper copies up to 8 1/2in x 14in shall be provided at a cost of not more than 15 cents per one-sided copy and 20 cents for double-sided copies, and for all other copies upon payment of the actual cost of duplication of the record.
 - ii. Certified copies shall be no more than 1 dollar
 - iii. Shipping- U.S. postage, or other costs incurred in the delivery of public records shall be included in the actual costs charged to the customer.
- c. **Email Extraction Fee.** \$10.00. Additional charges may be incurred for extensive researches.
- d. If an estimated fee has been provided and the customer accepts the cost estimate, the City shall not exceed the original estimate by more than an additional 25%, even if the actual cost associated with the request exceeds 125% of the original estimate given.
- e. **Cumulative Requests.** Multiple requests from the same customer in a one week period which cumulatively take more than 1 hour to compile and review shall be considered extensive requests and charged accordingly.
- f. As a matter of comity the City will not charge fees to other governmental entities requesting public records when acting for a public purpose.
- g. The fee provisions of this policy are not intended to prevent City Directors or employees from providing documents to third parties at no fee when no public record requests have been made but the provision of public records would serve a public purpose.

8. Information Requests

- a. The City strives to be open and transparent. From time to time the City may receive information requests, often described as public record requests. The City is not required to answer information requests under Chapter 119. If the City has responsive documents to the request, the City should provide the documents. To the extent that there may not be a document exactly responsive to the request, Department Directors shall have the discretion to answer the requests even though no responsive documents may exist.

- b. When answering information requests Department Directors and employees should be mindful of the Miami-Dade County Citizen's Bill of Rights Truth in Government Requirement, which provides that no City official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.
 - c. Department Directors should consider the time needed to respond and the public purpose of the information request in determining when to respond to information requests.
 - d. **Media Requests:** Should any department receive information requests or requests for comment from the Media the requests should be immediately forward to either the Public Affairs Manager or the Public Information Officer in the Police Department. The City Manager's and City Attorney's offices should also be informed.
9. Safe Harbor Provision. City employees shall be immune from criminal or civil prosecution for actions taken pursuant to this policy.