

RESOLUTION NO. 2019-153

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, ESTABLISHING AN AMENDED AND RESTATED PUBLIC RECORDS POLICY FOR NASSAU COUNTY, FLORIDA; PROVIDING FINDINGS; PROVIDING DEFINITIONS; PROVIDING PURPOSE, SCOPE AND APPLICABILITY; DESIGNATING THE PUBLIC RECORDS CUSTODIAN AND PROVIDING FOR THE DUTIES THEREOF; PROVIDING PROCEDURES FOR PUBLIC RECORDS REQUESTS; PROVIDING FOR RECORDS RETENTION AND DISPOSAL; PROVIDING FEES TO BE CHARGED FOR PUBLIC RECORDS REQUESTS; PROVIDING FOR REDACTION OF PERSONAL INFORMATION; PROVIDING FOR TRAINING, COMPLIANCE, AND VIOLATIONS; AUTHORIZING THE CUSTODIAN TO DEVELOP FORMS; REPEALING RESOLUTION NO.S 97-144, 2006-108, 2011-64, 2014-016, AND 2018-55; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, provides that County records shall be made available to the public upon reasonable request;

WHEREAS, the Nassau County Board of County Commissioners advocates a policy of full compliance with the Public Records Law in order to encourage transparency and participation in its government; and

WHEREAS, the Board now desires to establish this amended and restated policy for all its officers, employees, and agents in order to ensure full compliance with the Public Records Law and to provide guidance to its officers, employees, agents, and the public on processing of Public Records requests;

NOW, THEREFORE, BE IT RESOVLED by the Board of County Commissioners of Nassau County, Florida, as follows:

SECTION 1. FINDINGS. The above findings are true and correct and are hereby incorporated herein by reference.

SECTION 2. DEFINITIONS. As used in this resolution, the following terms shall have the following meanings, unless the context hereof otherwise requires:

"Actual Cost" means the base hourly salary plus benefits for county employees or the applicable contractual rates for contracted county services.

"Board" means the Board of County Commissioners of the County.

“Confidential” means those records, or portions thereof, specifically designated as “confidential” by applicable law. The County may not release records designated by law as confidential.

“County” means Nassau County, Florida.

“Custodian” or “Public Records Custodian” means the Records Management Division of the County, which is the designated entity responsible for the management of County Public Records.

“Electronic Communications” means all Public Records, regardless of the technology or means of transmission, sent electronically from one device to another and pertaining to official County business. This includes electronic mail (e-mail), SMS messages (text messages), MMS (including multimedia and picture messages), and social media records (Facebook, Instagram, YouTube, Twitter, etc.).

“Employee” means all persons who are full-time or part-time employees of the County, and shall also include any non-paid volunteers and interns, as well as all members (whether elected or appointed) of any County dependent special district, advisory board, and committee.

“Exempt” means those records, or portions thereof, specifically designated as “exempt” by applicable law. As exempt records, the County may release such records, in whole or part, in its discretion.

“Extensive Request” means a Public Records request that due to the nature or volume of the records requested will require in excess of 30 minutes of information technology resources, clerical, legal, or supervisory time.

“Officers” means a member of the Nassau County Board of County Commissioners, any appointed County officials, and the Clerk of Court when acting in his/her capacity as ex-officio clerk to the Board.

“Public Record” shall have the definition as specified by §119.011(12), F.S., as may be amended from time to time, which currently states “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.” This definition shall be interpreted liberally to include all records prepared in connection with official County business, including electronic communications, which are intended to perpetuate, communicate, or formalize knowledge. This definition includes e-mails and text messages created or transmitted in connection with the transaction of official business, regardless if the communications were sent from a County-owned device or a privately owned device.

“Public Records Act” means Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes.

“Public Records Policy” or “Policy” means this Resolution, as it may be amended from time to time.

“Redact/Redaction” means the act of censoring all or part of a Public Record to obscure or excise Exempt or Confidential information contained therein, thereby preventing public disclosure of the protected content.

“Special Service Charge” means a charge for Extensive Requests to be calculated as the Actual Cost based on the time and effort incurred in fulfilling the request for the lowest cost employee or contractor who is able to fulfill the request.

SECTION 3. PURPOSE, SCOPE AND APPLICABILITY.

(A) It is the purpose of this Policy to ensure that the Public Records of the County are effectively retained, managed, and disposed in a manner consistent with Florida law embodied in the Public Records Act, Section 257.36, Florida Statutes (records disposition), Chapter 688, Florida Statutes (electronic commerce), Chapters 1B-24 and 1B-26, Florida Administrative Code (disposal of records and electronic record-keeping), the Florida General Records Schedules (GS1-SL) established by the Florida Department of State, and other applicable laws.

(B) It is the policy of the County to comply with the Public Records Act by making the County’s Public Records available for inspection at reasonable times and under reasonable circumstances and, upon request, provide copies of such records at costs authorized by Florida Statutes and this Policy. Furthermore, all County officers and employees have a duty to preserve and retain all Public Records, including Electronic Communications, in compliance with Florida law.

(C) This Public Records Policy shall apply to all Officers and Employees when acting in furtherance of official County business and to all departments of the County.

SECTION 4. CUSTODIAN.

(A) While Public Records requests may be submitted to any County Officer or Employee, for the most expeditious processing, the County recommends that Public Records requests be submitted directly to the Records Management Division, which serves as the County’s Public Records Custodian.

(B) For the convenience of the public, the Custodian maintains the following website containing comprehensive information related to the submission and processing of Public Records requests:

<https://www.nassaucountyfl.com/178/Public-Records-Requests>

(C) Persons wishing to submit a Public Records request may do so via telephone, email, U.S. mail, fax, or in person via the following:

Records Management Division
96135 Nassau Place
Suite 1, Yulee, Florida 32097
(904) 530-6010
E-mail: records@nassaucountyfl.com
Fax: 904-321-5784

SECTION 5. PUBLIC RECORDS REQUESTS.

(A) Members of the public shall not be required to submit Public Records requests in writing or upon any preprinted form. A request may be submitted in any format including written, orally, or via electronic communication including telephone, e-mail, or fax. The requestor does not have to show any special or legitimate interest in the record requested. The request may be made anonymously. Employees must honor a Public Records request in any format and/or means of submittal. However, the County *encourages* requestors to submit written requests, thereby providing documentation of their request should any dispute arise.

(B) The Custodian shall serve as a centralized coordinator of all requests for County records.

(1) Upon receipt of a Public Records request, the Officer or Employee to whom such request was made shall promptly forward the request to the Custodian for processing in accordance with this Policy. Within three (3) business days of receipt of the request, the Custodian shall provide an acknowledgment of its receipt to the requestor. The acknowledgment shall indicate the date and time of the request, the documents requested, an initial estimated processing time, an initial estimated cost and the required deposit, if any.

(2) In the event the individual or entity requesting access to Public Records is involved in active or threatened litigation or is representing such persons, or in the event the subject matter of the request involves active or threatened litigation, such request shall be referred to the County Attorney's Office for fulfillment. The County Attorney shall notify the Custodian upon the completion of the request.

(3) Upon notification of a Public Records request, all Officers and Employees shall promptly provide all relevant information related to the request to the Custodian. The Custodian shall process the request in accordance with the policies and procedures established herein.

(4) The Custodian shall keep a log of all Public Records requests. All Public Records shall be tracked in a manner that identifies the specific Public Records requested and a telephone number or other means of communication with that person to advise when the documents requested are ready for pick up or available for review. Such written records are to ensure that persons requesting documents obtain the requested records.

(C) In processing a Public Records request, all potentially responsive records that are known or suspected to contain Exempt or Confidential content shall be reviewed by a properly trained employee.

(1) Any public record containing information that is a "Confidential" under applicable law shall not be made available for inspection or copying unless and until the Confidential portions of such record are sufficiently Redacted to prevent disclosure.

(2) At the discretion of the County, Public Records containing information that is "Exempt" from disclosure under applicable law may be Redacted to remove any such Exempt information prior to the records being made available for inspection or copying.

(3) If a Public Record is Exempt or Confidential pursuant to applicable law, the basis for the refusal to release should be provided in writing. If only a portion of the Public Record is exempt, only that portion can be Redacted, but the remaining record must be provided for examination. All exemptions of a Public Record or portions of a Public Record must be specifically authorized by law.

(4) At the request of the Custodian, the County Attorney's Office shall assist with the evaluation of potentially exempt or confidential information contained in Public Records.

(D) It is the goal of the County to fulfill Public Records requests within seven (7) business days, provided that it is not an Extensive Request, that the requested records are readily accessible, and absent of Exempt or Confidential information. Extensive Requests, requests spanning multiple County departments, or requests for records requiring Redaction of statutorily Exempt or Confidential information may result in longer response times. When these or other circumstances arise requiring a longer response time, the Custodian will contact the requestor to inform them of a revised estimated processing time.

(E) Upon receipt of a Public Records request, the Custodian cannot refuse a request because the request is over broad, but can request clarification from the person requesting records. For an Extensive Request the County will charge, in addition to the cost of duplication, a Special Service Charge in accordance with Section 8 of this Policy.

(F) The County is required to produce Public Records in a timely manner; however, the County is not required to conduct research or extract data to create documents. Additionally, the Custodian and other County Employees and Officers are not required to answer questions or create or reformat Public Records in a particular form if the Public Records are not already available in that format or form. If Public Records are available in more than one format, the requestor may choose which format/medium to receive; however, staff are not required to convert records into a new medium or format. Furthermore, staff shall not convert records from one format to another with the intent of frustrating or inconveniencing the requestor, or hindering the requestor's ability to easily and conveniently utilize the records or data.

(G) The County shall not accept any “standing request” for Public Records that do not yet exist, or for records that may be created or received by the County at some future date. The County is only obligated to respond to requests by providing records that exist at the time a Public Records request is submitted.

(H) Although it is not required, persons making Public Records request are encouraged to provide as much detail and specificity in each request so as to positively identify the records sought. Specifically, it is helpful for the requestor to:

- (1) Provide a date range;
- (2) Provide the name(s) of the specific employees, individuals, County departments, and/or business entities pertaining to your inquiry;
- (3) Provide a list of relevant keywords or search parameters;
- (4) If the request pertains to e-mail, provide the relevant e-mail address(es) and/or domain name(s), if known; and
- (5) If the request pertains to property, provide the address, parcel number, or owner’s name, if known.

Providing such detail assists County Employees in narrowing the scope of the request to encompass only those records sought, which can reduce the staff time required to process the request as well as the fees charged to the requestor.

(I) The custodian must keep Public Records secure, reasonably protected from alteration or destruction, and readily available. In that, the Custodian must ensure that original Public Records are not defaced, removed or altered in any fashion. The Custodian must allow Public Records to be inspected and examined by any person desiring to do so, at any reasonable time. Inspection can be done under reasonable conditions, but the Custodian may not impose a condition of inspection which operates to restrict the right of access. When a person desires to review original Public Records, it is necessary that an Employee be present to ensure the integrity of the Public Records is maintained. As such, the County will impose a Special Service Charge for staff time that is in excess of 30 minutes needed to oversee a person’s review of original Public Records in the manner provided in Section 8 of this Policy.

SECTION 6. RECORDS RETENTION.

(A) Public Records must be retained in accordance with Florida law. Records may not be disposed until the longest applicable retention period has been satisfied, per the published retention schedules. The State of Florida, Department of State, Division of Library & Information Services (DLIS), has developed a set of records retention schedules containing individual record series defining various Public Records and establishing minimum retention

requirements. Such retention schedules are primarily based on the type of record rather than the format in which it is in (i.e. paper document or electronic file).

(1) All County Officers and Employees must adhere to these schedules and shall keep records in compliance with the longest retention period imposed therein.

(2) To the extent County Officer and Employees have questions concerning the application of the retention schedules to a particular County record, they should consult with the County Attorney.

(3) Upon leaving County service, all County Officers and Employees shall transfer all Public Records in their possession to the Custodian or their successor in function, as applicable.

(B) All Electronic Communications that are Public Records must be retained in accordance with Florida law.

(1) To satisfy this requirement with regard to Electronic Communications, the County shall acquire, implement, and maintain IT systems that maintain a searchable archive of messages sent or received from the County's centralized e-mail platform (e.g. Microsoft Outlook/Exchange) and all County owned or leased mobile devices.

(2) Officers and Employees are prohibited from using private, non-County e-mail servers to conduct County business (e.g. @gmail.com, @yahoo.com, etc.). Should any Officer or Employee receive unsolicited e-mail communications that are Public Records to their private/personal e-mail account, it is the duty of the Officer or Employee to preserve and retain all communications regarding County business and to promptly transfer those records to the custody of the County, either by forwarding the communication to the individual's County e-mail account or providing same directly to the Custodian with instructions that the records be preserved in accordance with this Policy.

(2) Officers and Employees are prohibited from using private, non-County owned or leased mobile devices to send or receive SMS messages, text messages, instant messages, or MMS (including multimedia and picture messages) to conduct County business. Should any Officer or Employee receive unsolicited messaging communications that are Public Records to their private/personal mobile device, it is the duty of the Officer or Employee to preserve and retain all communications regarding County business and to promptly transfer those records to the custody of the County, either by forwarding the communication to the individual's County e-mail account, a County-issued mobile device, or providing same directly to the Custodian with instructions that the records be preserved in accordance with this Policy.

(3) It is permissible to transmit Electronic Communications from a private email account or a non-County owned or leased mobile device to a County email account or a County-issued mobile device as the County email account and County-issued mobile

device will preserve a record of the Electronic Communications. It is the intent of this section to prohibit County business-related Electronic Communications originating from a private device from being transmitted to another privately owned device, thereby circumventing the County's automatic-retention software.

(4) Technologies other than text messaging: The prohibition on using private devices and private accounts for Electronic Communications regarding County business shall be broadly interpreted to prohibit the use of any technology for which the County lacks a mechanism to automatically retain every Electronic Communication, including instant messaging, personal messaging, social media messaging (Facebook, Twitter, Instagram, Skype), etc.

(C) The County shall acquire, implement, and maintain a retention system to collect and store all content posted to County-owned or maintained social media accounts. All County departments who manage a County-sponsored social media account shall enroll such accounts into the retention system. All County Officers who maintain an official social media account for their office shall enroll such accounts into the retention system.

(D) In general, Public Records stored off-site may not be protected by the County's insurance policies. Therefore, Public Records shall be kept and maintained in a County owned, leased, or operated facility. In addition, employees shall not store Public Records on equipment or devices not owned, leased, or controlled by the County. Any Public Records stored on non-County equipment or on premises not owned, leased, or operated by the County shall be promptly returned to the custody of the County. For purposes of this Policy, storage of electronic documents in a cloud based storage system is permissible.

SECTION 7. PUBLIC RECORD DISPOSAL.

(A) No Public Record that is the subject of an active Public Records request or which pertain to active, pending, threatened, or anticipated litigation shall be disposed without the written consent of the County Attorney. The County Attorney, or his/her designee, shall provide written notification to the Custodian, and each affected department director, and each shall take the appropriate measures to enact a "legal hold" to prevent the disposal or destruction of any records pertaining thereto. Upon the conclusion of litigation, the County Attorney, or his/her designee, shall inform the parties to lift the "legal hold" placed upon the records.

(B) All other Public Records may be disposed upon the expiration of the longest applicable retention period. When disposal is conducted, all Public Records containing Exempt or Confidential information shall be disposed using a means of destruction authorized by the Florida Administrative Code.

(C) Departments shall notify the Custodian upon the destruction of any Public Records in the custody of the County.

(D) In accordance with Chapter 257, Florida Statutes, the Custodian shall complete and return the annual statement to the Florida Department of State summarizing the records disposed during the year.

SECTION 8. FEES.

(A) The County shall assess the following fees for Public Records requests in accordance with section 119.07(4), Florida Statutes, as it may be amended from time to time:

\$.15 per page for single page copies (8.5" x 11" and 8.5" x 14")

\$. 20 per page for double sided copies (8.5" x 11" and 8.5" x 14")

\$0.20 per page for single page copies (11" x 17")

\$0.25 per page for double sided copies (11" x 17")

\$5.00 per page for larger documents (building plans, maps etc.)

\$1.00 per page for certified copies of public records

\$1.00 per CD/DVD

USB Flash Drive (at cost)

Special Service Charge for Extensive Requests

For other documents not specifically addressed, the actual cost of duplication, materials, and postage shall be charged

(B) Eligible records in County custody may be certified upon request by affixing the County Seal and the signature of the Custodian or his/her designee. The Custodian will assess the fee noted above for certification of records.

(C) In the event a requestor (or multiple requestors working in concert) attempts to submit multiple requests related to the same or similar subject matter over a period of time in an attempt to avoid paying fees, the County may aggregate the time it expends on each subsequent request in order to calculate the appropriate fee and to determine whether the request qualifies as an Extensive Request for payment of a Special Service Charge.

(D) For requests where a fee or Special Service Charge is assessed, the Custodian shall transmit a cost estimate to the requestor and in the event the cost estimate exceeds \$50, the requestor must pay a deposit in the amount of 50% of the total estimate prior to the County initiating any work relative to the request. In such cases, the responsive records shall not be

provided to the requestor until all outstanding assessments have been paid in full. If the requestor asserts that the deposit requirement is a hardship, the Custodian is authorized to discuss and approve alternative terms.

(E) Should the County attempt to contact the requestor and/or transmit a cost estimate and the requestor fails to respond in good faith, the County shall deem the request as "abandoned" after a period of seven (7) calendar days and the log shall reflect the abandonment. In cases where holidays or other closures of the County's administrative offices occur, staff shall afford reasonable additional time to the requestor to respond.

SECTION 9. REQUESTS TO REDACT PERSONAL INFORMATION.

(A) Certain current and/or former public employees, victims of certain crimes or domestic abuse, and other persons identified by Florida law are entitled to protection of certain personal information per Florida law.

(B) Persons qualifying for such exemption shall file a written request with the Custodian requesting such protection, on a form prescribed by the Custodian for such purpose. When required by statute, the form shall require a statement from the requesting party that they have made reasonable efforts to protect their personal information from being accessible by the public through other sources. The requesting party shall provide to the County the address of all residences and home telephone numbers to be exempted from disclosure.

(C) Any request for redaction filed with the Custodian shall expire after 5 years, or upon any event that triggers a loss of entitlement to such protection. As a courtesy to those whose redaction request expires, if an e-mail address has been provided to the Custodian, the Custodian shall attempt to notify the registrant within 90 days of expiration. The Custodian shall not be required to contact registrants via telephone or postal mail.

(D) The Custodian is authorized to utilize the data and records of any County constitutional officer or other public agency for purposes of administering requests for redaction.

SECTION 10. TRAINING, COMPLIANCE & VIOLATIONS.

(A) Employees are hereby notified that violation of this Policy and/or Florida law regarding Public Records shall be grounds for disciplinary action in accordance with the County's personnel policies and procedures. Repeated violations or flagrant abuses shall be grounds for termination.

(B) Officers and County department heads shall annually file a sworn statement, under penalty of perjury, confirming their understanding of and compliance with this Policy. Additionally, said personnel shall complete at least one (1) hour of annual training concerning Florida Public Records law.

(C) On an annual basis, all Officers and each department head shall be provided a copy of the latest version of the "Government in the Sunshine Manual," compiled by the Attorney General, also available at the following site:

<http://www.myfloridalegal.com/sun.nsf/sunmanual>

SECTION 11. MISCELLANEOUS PROVISIONS.

(A) The Custodian shall be responsible for the preparation of any forms necessary for the implementation of this policy. It shall be his/her responsibility to administer this Policy and to recommend any amendments that may, from time to time, be appropriate.

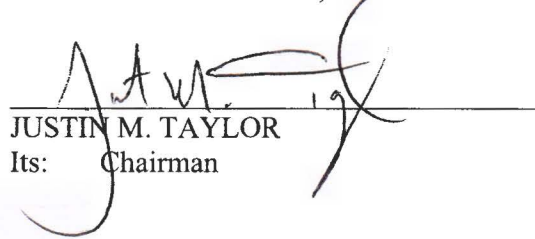
(B) This Policy shall replace the County's public records policy adopted in Resolution No.s 97-144, 2006-108, 2011-64, 2014-016, and 2018-55, which resolutions are hereby repealed.

(C) This Policy does not create a private cause of action, a new duty of care, or a basis of liability, and third parties may not recover damages or seek enforcement action against the County, an officer, or an employee for a violation of this Policy.

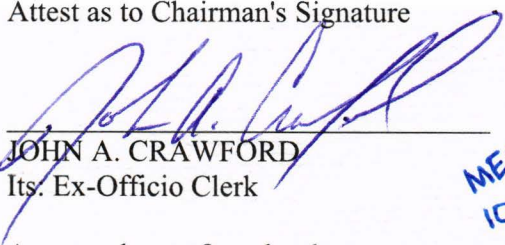
SECTION 12. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage.

DULY ADOPTED this 16th day of October, 2019.

BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA


JUSTIN M. TAYLOR
Its: Chairman

Attest as to Chairman's Signature


JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:


MICHAEL S. MULLIN

MES
10-18-19