

# The City of Key West

**FLORIDA**

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## **Records Management Plan**

**Training Manual**



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## PUBLIC RECORDS

Florida Public Records Law, as codified in **Chapter 119, Florida Statutes** (F.S.), provides a clear mandate for public agencies to manage public records in a professional manner. In addition to Chapter 119, F.S., a significant body of standards and requirements govern the "life cycle" of Florida's public records, including the Florida Department of State, Division of Library and Information Services' enabling legislation, **section 257.36, F.S., and Chapters 1B-24 and 1B-26 of the Florida Administrative Code** (F.A.C). To address the complexities associated with Public Records management in the State of Florida, a comprehensive records and information management program is an essential component of any business entity, public or private. It is, therefore, critical to define the scope of the program; and especially to define the term "record."

As defined by **s. 119.011(12), F.S.**, "Public Records means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, 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." It is critical to understand format, media type or duplication does not affect the public record status of information created or received by a public agency. The recommendations contained within this Plan apply to hardcopy as well as digital records, unless otherwise noted. Generally, the Agency should select media types for retention based on economy and efficiency, with lengthy retention implications in mind, as shall be discussed.

### **Drafts vs. Support Documents and Working Papers**

In *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, **379 So. 2d 633 (Fla. 1980)**, the Florida Supreme Court contrasted the definition of "public records" with the concept of *Precursor* records. **Precursors are not Public Records** and can be thought of as *Drafts* or notes which precede the creation of a final intended record product and are not "intended as final evidence of the knowledge to be recorded." Since there is no "unfinished business exception" to the understanding of "Public Record," Consultant cautions the City not to presume all drafts are therefore precursors as shall be discussed. Machine-readable *Intermediate Files* are the digital equivalent of Precursor as described above. Since media is not a criterion for Public Record status, the concept of a draft allows for editorializing at the word processor during the formulation of a final intended record product. The resulting machine-readable drafts are considered intermediate files "which are precursors of governmental records and not intended as final evidence of the knowledge to be recorded but are utilized by data processing computer equipment to prepare further records." **Intermediate Files are not public records.**

Further, there is no *unfinished business* exception. If the purpose of the record is to perpetuate, communicate or formalize knowledge, then it is a Public Record regardless of whether or not it is in final form. In the absence of a final intended product, precursor or intermediate files (drafts) may constitute the final evidence of knowledge. Drafts cease to be Public Records only after the final intended record has been produced.

Drafts must not be confused with *Support Documents*. **Support Documents or working papers are Public Records.** Working papers *support* the final intended record product, whereas drafts merely precede the creation of a final intended product. Support Documents are Public Records from point of creation to destruction regardless of the final intended record produced. For example, a handwritten note created during the normal course of business is a Public Record. However, if that handwritten note is formalized by word processing (for example) into a final intended record, the handwritten note ceases to be a Public Record and may be destroyed as non-record material since the information contained within the handwritten note has been transferred to the final intended record. Yet, to continue the example, a collection of handwritten notes from which information is extracted as a conclusion and represented in some other record is a Support Document. The extracted data does not reflect the entire informational content of the collection of handwritten notes, but merely supports a conclusion represented by another Public Record. The best way to avoid this possible conclusion is to note where certain support documents and workings paper receive retention in published Department of State General Schedules.

### **Public Documents, Blank (Unused) Forms, and Printed Material**

**Chapter 257.05, F.S.** defines information that has been funded in whole or in part by the Legislature and printed to distribute information to the public as a *Public Document*. A Public Document, as defined by Chapter 257.05, F.S., **is not a Public Record**, according to the Florida Department of State (DOS). For example, an inventory of promotional information is not a Public Record for scheduling and disposition purposes and is actually a Public Document (i.e. property/inventory); however, either the camera-ready copy used to create the promotional material, or a final printed version is a Public Record. In this way, the Public Record is created and managed per Chapter 119, F. S., yet the printed inventory is not. Blank, unused forms are another example of a non-record. Using this same logic, similar printed material *received* by the Agency may also be exempted from the Public Records Program including magazines, books and other published works, newsletters, advertising (junk mail and even *personalized* junk mail), and catalogues.

# CATEGORIES

A successful Records Program requires an understanding of categories - the basic components into which record collections may be parsed for disposition purposes. To be easily understood throughout the City by all staff, these categories should be limited to a very basic *record series title* level. This is also a requirement of the Florida Department of State as outlined in **Rule Chapter 1B-24, F.A.C.**, for Scheduling and Disposition purposes. Basic information includes:

1. **Record Series Title.** A record series title is the name applied to a collection of information relating to the same subject or activity. The Record Series Title is determined by the Florida Department of State. For instance, Personnel File is the name of a collection of data about a specific employee. Personnel File is a convenient label for a nearly unlimited variety of information (the Personnel File must not contain medical information, see the Federal American's with Disability Act) and is an efficient way to identify that collection rather than attempting to list all documents actually contained within a Personnel File. Record retention schedules are approved by the Department of State per record series title, therefore every effort must be made to conform to existing Record Schedules. In some instances, a match to existing schedules will not be possible or desirable; or a collection of information will be identified that is unique, or specific to one organizational unit. In this instance, the City Records Management Liaison Officer (RMLO) should be contacted by staff for assistance.

2. **Inclusive dates.** The oldest date within the collection through to the most recent date eligible for disposition. Most record series titles will accumulate to the present.

3. **Volume** in cubic feet using the following conversions:

10"x12"x15" box	1.0
Letter-size drawer	1.5
Legal-size drawer	2.0
Letter-size 36" shelf	2.0
Legal-size 36" shelf	2.5

Records are then separated into four categories in accordance with Florida Department of State retention requirements:

1. Records within retention;
2. Records past retention, eligible for destruction;

3. Records with no approved retention; and
4. Records with sufficient retention or historical significance to justify conversion to microfilm.

**Category One (Records within retention):** Records may be further divided by active and inactive status. Active records should remain with the user until the termination of *administrative value*. Administrative value is the value a record series has for day-to-day function and operation. Inactive (or *less active*) records should be uniformly containerized and computer indexed for high density, low cost, secure storage until retention has been satisfied.

**Category Two (Records past retention, eligible for destruction):** Records should be destroyed without further delay, after inclusion on the City's Records Disposition List.

**Category Three (Records with no approved retention):** The City RMLO should submit to the Department of State a Form 105, Request for Records Retention Schedule to establish retention. The Form 105 is available for downloading as a Word Document or PDF File from the Department of State web site [<http://dlis.dos.state.fl.us/recordsmgmt/publications.cfm>]. Based upon the Department of State approved retention, Category Three records should be reclassified to Category One, Two or Four.

**Category Four (Records with sufficient retention or historical significance to justify conversion to microfilm):** Records should be scheduled for conversion to microfilm, Computer Output Microfilm (COM) or other storage device in priority order based upon media condition (worst case records stabilized first), series retention value (permanent records first), or administrative value (high reference records first).

### **Copy of Record vs. Duplicate Records**

An immediate problem will be the identification of copy of record vs. duplicate records. **Copy of Record** or Record (Master) Copy means the public record specifically designated by the City as the official, retention copy. **Duplicate Record** means all reproductions of copy of record or record (master) copies, prepared simultaneously or separately, which are designated by the City as not being the copy of record. The office of origin for *internally* generated documents holds the copy of record while receiving offices have duplicates. For *externally* generated records received by the City, the office, which performs the last administrative act is recognized as holding the copy of record. This will

prevent accidental destruction of records as misidentified duplicates since the copy of record is maintained per the appropriate schedule.

## Email

Email often engenders considerable confusion relative to Public Records Law. Email questions have triggered interesting Attorney General Opinions addressing core issues related to email. Retentions are not written for media types. Email is a media type and has no specific retention. The retention for email is content driven. Retentions are written for informational content by record series title. Some Email is *interoffice memoranda* and *correspondence*. Some Email (or more often attachments to email) may include record series titles with even greater retention. Most often, Email is a duplicate or *transitory message* with an OSA (Retain until Obsolete, Superseded or Administrative Value is Lost) retention. Some email is personal and private.

The Agency's Records Management Program applies to all records, regardless of physical form, characteristics, or means of transmission, created or received by the Agency in connection with the transaction of official business. The Agency is charged with ensuring compliance with all relevant Florida Statutes and the Florida Administrative Code regarding access, the systematic retention, storage and disposition of all Agency records, including email.

The Florida Supreme Court of Florida in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980), stated that a public record, for purposes of Chapter 119, "is any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." The fact that information can be made or received electronically does not change the constitutional rule-mandated obligation of agencies and employees to direct and channel such official business information so that it can be properly recorded as a public record.

The Agency is obligated to ensure all records, including digital and electronic (email) communications are retained and disposed of in accordance with retention schedules as documented on the Agency's Disposition List. This List is prepared by the Agency RMLO and distributed to Agency Record Coordinators. Email retentions are content driven. There is no specific retention for Email, or any other digital data.

# DISPOSITION

Disposition is the application of approved retention schedules to record series titles. By far, the most economical solution to public records management is to destroy based on Department of State approved retention schedules. Records should be destroyed as soon as legally possible.

## Destruction

The procedures for destroying public records are outlined in Chapter 1B-24, Florida Administrative Code. The City continues to be responsible for all records created since the start date of the City until the record has been obliterated pursuant to DOS approved retentions, including any relevant records created by private entities acting on behalf of the City. Therefore, records that are "missing" remain the legal responsibility of the City. Further, records offered for recycling when disposition warrants continue as Public Records until obliterated. Therefore, great care should be exercised in the selection of a recycling provider. Consultant recommends the use of a bonded service if recycling is selected.

By written policy, the Department of State has approved the use of landfills for the destruction of records that have met retention, provided the data set does not contain any exempt data elements. The City may also sell record media (not the informational content) for paper recycling. Recycling is a good way to destroy records and render the records unreadable, especially where security is an issue. Public Records may not be sold or given away. The City must maintain Public Records through to destruction. Although copies may be sold pursuant to Access provisions in Chapter 119, F.S., once sold, the copies are no longer Public Record unless sold or given to other Florida Public Agencies.

## Disposition List

The Disposition List must represent *actual* destruction, hence the need to destroy all present accumulations eligible. This includes all media. If paper records are destroyed, yet digital records of the same information and record series title are maintained, the Disposition List is incorrect. Ending dates must be amended to accurately depict accumulations not destroyed. As new Schedules are approved for the City, add these titles and appropriate dates to the List. If source documents relative to destruction are produced (certificates of destruction from recyclers, land fill tickets, etc.) attach these and reference in **box 6., column f. and box 7.**

Each year, the Florida Department of State will send the City RMLO a **Records Management Compliance Statement** to complete and return. This will include reporting the volume of records destroyed for the previous fiscal year, including duplicate records. October 2014, the City RMLO should prepare another list for fiscal year 14/15; again as a draft scheduled for completion October 2015. The List should not be generated by any Department other than the RMLO. The RMLO should take a proactive role and identify records eligible for destruction and notify Coordinators accordingly. The disposition process should not be reactive based on individual accumulations. This process is repeated each fiscal year. The City RMLO should note some dates are missing and require Department Coordinators to complete. Be sure to read published retentions and note that in many instances, retention proceeds from some action or trigger, not merely creation date. Department Coordinators with an intimate knowledge of their records are required to complete the list based in part, on these events that begin retention. The list has been prepared for **Agency Wide** application by the Consultant.

### **Off-site Storage**

Next to destruction, the most economical disposition is usually off-site storage. Off-site storage provides for secure retention and therefore, disaster recovery protection, as well as eliminating records from valuable office floor space. Records should be boxed and removed to off-site storage when administrative value is terminated. Hard copy records, magnetic media and security microfilm should all be considered for off-site storage and protection.

Records stored off-site must be monitored for destruction date. The best way to address this problem is with a computer-generated index including anticipated destruction date to generate a destruction report. Four different environments are required, one each for hardcopy records not archival, hardcopy records designated as archival, security microfilm and magnetic tape.

The use of a high density, low cost storage facility for boxed records is a vital component of any effort to remove and destroy records eligible for destruction. The following is offered as a guide to make the most of this facility.

1. Only records with remaining retention, yet virtually no administrative value should be considered for off-site storage.
2. Records should be packed into uniform, **one cubic foot boxes** (10x12x15 inches) with a removable or hinged lid, although removal is preferred.
3. Every record within each box must have the same destruction date.

4. Records should be indexed. Only a box number should appear on the box as a *label*.
5. Records Coordinators are responsible for selecting, boxing and transmitting records to on-site or off-site storage location as authorized by the RMLLO.
6. As records are eligible for destruction, they should be destroyed. Existing boxed records need to be reviewed by staff for destruction eligibility.

## ACCESS

Whereas scheduling is the heart of a Records Management Program, access is the heart of Florida's Public Records Law. Florida has the most rigorous Public Records Law in the World, bar none! We have been described as having the most *open* government in the World. Government in the Sunshine is not a hollow phrase. In Florida, all Public Records are open to inspection during reasonable times and under reasonable conditions, to any person for whatever reason; unless specifically exempted by law. Access to Public Records in Florida is the most complicated and challenging aspect of managing information in a Public Agency (for staff *and* for the public). During the 1970's most court cases relative to Florida's Public Record Laws were triggered by the question of whether a particular piece of information *was* a Public Record. Following the 1980 Florida Supreme Court Case, *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980) and through to the present, most Public Record cases concern access.

One of the very best sources of information relative to Florida Public Records access is the **Government-in-The-Sunshine Manual** published by the **First Amendment Foundation (FAF)**. A new volume is usually available every January, however ordering, delivery and printing delays often reach into February. The telephone number to secure a copy is (850) 224-4555. A copy may also be ordered via the FAF website [[www.floridafaf.org](http://www.floridafaf.org)]. An abridged online version of the Manual is available on the Florida Attorney General's website [<http://www.myflsunshine.com>].

The City must be concerned with internal administrative access also, hence the need for intelligent filing systems, technology, scheduling and destruction. If in-house administrative access is insufficient, then public access obviously suffers, also.

## **Fees**

Access not only means a visual inspection, yet also requires that duplicates be provided if requested and are not limited by statute. Section 119.07, F.S., provides, in part, that “the custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law”, or, if a fee is not prescribed by law; for duplicated copies of not more than 14 inches by 8.5 inches, upon payment of not more than 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge not more than an additional 5 cents for each two-sided duplicated copy of not more than 14 inches by 8.5 inches. Actual cost of duplication means the cost of the material and supplies used to duplicate the record, but does not include the cost of labor or overhead costs associated with such duplication. An agency may charge up to \$1.00 per copy for a certified copy of a public record.

However, when the nature or volume of public records requested to be inspected, examined, or copied is such as to require *extensive* use of information technology resources or *extensive* clerical or supervisory assistance by personnel of the City involved, or both, the City may charge, in addition to the actual cost of duplication, a special service charge, which shall be *reasonable* and shall be based on the cost incurred for such extensive effort.

## **HIPAA**

The Health Insurance Portability and Accountability Act was signed into law in 1996 with a deadline for compliance of April 14, 2003. This federal legislation includes standards for protecting the privacy of medical and health information and requires covered entities to limit the use and disclosure of Protected Health Information (PHI). There are civil and criminal penalties. Consultant recommends a review of City records for compliance, especially those held by HR.

## **Relevant Access Limitation Sections, F.S.**

The following is offered as a guide, and is not meant to be all-inclusive. Further, the entire section must be read by related record holders. The following is paraphrased for quick reference:

### **Section 17.076(5)**

Direct deposit records made prior to October 1, 1986 are exempt. Same records made on or after October 1, 1986, names of financial institution, and account numbers of beneficiaries are exempt.

**Section 17.325(3)**

A call on the governmental efficiency hotline established by the Comptroller may be anonymous; name is confidential.

**Section 44.102(3)**

Except as otherwise provided in this section, communications in a court-ordered mediation proceeding are exempt from Chapter 119.

**Section 73.0155**

Business records provided by a business owner to a condemning authority are exempt.

**Section 110.1091(2)**

Employee assistance program (EAP) records are exempt from inspection.

**Section 110.1127(3)(d) and (e)**

Makes it a crime to misuse criminal records obtained for security background checks, and to misuse juvenile records.

**Section 110.123(5)(a)**

Physician's fee schedule used in health and accident plan exempt, except to persons involved in administration of state group insurance program.

**Section 112.08(7)**

Medical records and medical claims records exempt.

**Section 112.21(1)**

Records identifying government employees participating in any contract or account relating to tax-sheltered annuities or custodial accounts and the account activity is exempt from inspection.

**Section 112.215(7)**

Records identifying individual participants in any deferred compensation plan are exempt from inspection.

**Section 112.3188(1)**

Protects information relating to the violation by public officials or independent contractors of certain crimes.

**Section 112.324(2)(a)**

Protects information relating to investigation of a sworn complaint of a violation of this section.

**Section 112.533(2)(a)**

Complaints and information obtained pursuant to investigation of complaints against law enforcement officer exempt from inspection.

**Section 119.071(1)(a)**

Examination questions and answer sheets for the purpose of licensure, certification, or employment are exempt.

**Section 119.071(1)(b)1a**

Sealed bids or proposals received by the agency are exempt until such time as the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.

**Section 119.071(1)(c)**

Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt.

**Section 119.071(1)(d)1**

A public record prepared by an agency attorney is exempt (see section).

**Section 119.071(2)(c)1**

Active criminal intelligence information and active criminal investigative information are exempt.

**Section 119.071(2)(c)2a**

A request made by a law enforcement agency to inspect or copy a public record and the custodian's response and any information identifying whether a law enforcement agency has requested or received that public record are exempt during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

**Section 119.071(2)(d)**

Surveillance techniques or procedures or personnel is exempt (see section).

**Section 119.071(2)(g)1a**

All complaints and other records in the custody of any agency which relate to a complaint of discrimination are exempt (see section).

**Section 119.071(2)(j)1**

The identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime is exempt.

**Section 119.071(2)(j)1**

The home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or

domestic violence is exempt upon written request by the victim. Information shall cease to be exempt 5 years after the receipt of the written request (see section).

**Section 119.071(2)(j)2a**

Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct (see section).

**Section 119.071(3)(a)1**

Security System Plan held by an agency is exempt (see section).

**Section 119.071(3)(b)1**

Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt.

**Section 119.071(3)(c)1**

Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which documents are held by an agency are exempt.

**Section 119.071(4)(a)**

Social Security Numbers of all current and former agency employees are confidential and exempt.

**Section 119.071(4)(b)1**

Medical information pertaining to prospective, current or former officers or employees is exempt (see section).

**Section 119.071(4)(b)2a**

Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt.

**Section 119.071(4)(d)1a**

The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel; correctional and correctional probation officers; personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect; and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support

enforcement are exempt. The home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt.

**Section 119.071(4)(d)1b**

The home addresses, telephone numbers, and photographs of Certified Firefighters are exempt. The home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt.

**Section 119.071(4)(d)1f**

The home addresses, telephone numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties are exempt. The names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt.

**Section 119.071(4)(d)1g**

The home addresses, telephone numbers, and photographs of current or former code enforcement officers are exempt. The names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt.

**Section 119.071(5)(a)(5)**

Social Security Numbers held by an agency are confidential and exempt.

**Section 119.071(5)(b)**

Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt.

**Section 119.071(5)(c)2**

Information that would identify or locate a child who participates in government-sponsored recreation program is exempt.

**Section 119.071(5)(c)3**

Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program is exempt.

**Section 119.071(5)(d)**

All records supplied by a telecommunications company which contain the name, address, and telephone number of subscribers are confidential and exempt (see section).

**Section 119.071(5)(e)**

Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing is exempt.

**Section 119.071(5)(f)**

Medical history records and information related to health or property insurance provided to a municipality by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt.

**Section 119.071(5)(g)1**

Biometric identification information held by an agency is exempt.

**Section 119.105**

A person who comes into possession of exempt or confidential information contained in a police report may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for such purposes as long as that information is exempt. Violation of this section is a **third degree felony**.

**Section 121.031(5)**

Retirees' names and addresses are exempt from inspection as authorized by this subsection.

**Section 121.4501(19)**

Personal identifying information regarding a participant in Optional Retirement Program in FRS is exempt.

**Section 163.01(15)(m)**

Information received by a public agency in connection Florida Interlocal Cooperation Act that is proprietary is confidential.

**Section 163.64**

Participation in the creation or administration of a collaborative client information system may share information as long as restrictions are observed relative to confidential information.

**Section 166.0444(2)**

Municipal employee's personal identifying information relating to EAP is exempt.

**Section 166.045(1)**

Appraisals, etc., relating to a municipality's purchase of real property exempt.

**Section 192.0105(4)**

Taxpayers have right to have info kept confidential, including records.

**Section 192.105**

Federal tax information obtained pursuant to 26 U.S.C. s. 6103 is confidential.

**Section 213.015(9)**

Taxpayers have right to have taxpayer information kept confidential.

**Section 252.88(2) and (3)**

Specific hazardous chemicals location withheld.

**Section 259.041(8)(c)**

Offers and counteroffers for land acquisition are exempt, until . . .

**Section 281.301**

Information regarding security systems for any property owned by or leased to government agencies.

**Section 282.318(2)(a)**

Protects from inspection information relating to risk-analysis, results of internal audits and evaluations relating to data security and information technology and related internal policies and procedures (see section).

**Section 286.0113(2)(b)1. and 2**

Provides that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, is exempt from the Sunshine Law. In addition, any portion of a team meeting at which negotiation strategies are discussed is also exempt. "Competitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 286.0113(2)(a)1., F.S. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation. Section 286.0113(2)(a)2., F.S. A complete recording must be made of the exempt meeting; no portion of the meeting may be held off the record. AGO 10-42 (where statute required that closed proceedings of state committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded"). The recording and any records presented at the exempt meeting are exempt from public disclosure until the agency provides notice of an intended decision or until 30 days after opening the

bids, proposals, or final replies, whichever occurs earlier. Section 286.0113(2)(c)1. and 2., F.S. And see s. 286.0113(2)(c)3., F.S. (exempt status of recording if the agency rejects all bids, proposals, or replies, and concurrently provides notice of its intent to reissue a competitive solicitation). Section 255.0518, F.S. (sealed bids received pursuant to a competitive solicitation for construction or repairs of a public building or public work must be opened at a public meeting conducted in compliance with the Sunshine Law).

**Section 316.066(5)(a)**

Specific data contained in Motor Vehicle crash reports exempt.

**Section 320.025(3)**

Law enforcement agency registration application records exempt.

**Section 322.126(3)**

Disability reports exempt and used only to determine qualification to operate motor vehicle.

**Section 322.142(4)**

Restricts reproduction of driver's license photographs and signatures.

**Section 381.004(3),(4),(5),(6)**

HIV test results and the identity of the person tested are exempt from inspection except as other provided.

**Section 382.013(4) and (5)**

Birth certificate information exempt from inspection.

**Section 382.025(1)**

Except for those over 100 years old and not under court ordered seal, all birth records of this state are exempt from inspection, except as provided.

**Section 384.287(6)**

Information relating to HIV infection shall remain confidential as provided by law.

**Section 395.1025**

Notification to EMT of patient infectious disease done in a manner to protect confidentiality and not include patient's name.

**Section 401.30(4)**

Emergency call records with patient exam or treatment information exempt.

**Section 440.102(8)**

Drug testing records exempt.

**Section 443.1715(3)(b)**

Unless otherwise authorized by law, information received by an employer through a drug-testing program or by a public employee under this chapter is exempt from inspection.

**Section 447.307(2)**

Petitions and dated statements signed by employees regarding whether employees desire to be represented in a proposed bargaining unit are exempt from inspection except to verify and challenge signatures as provided by the subsection.

**Section 624.311(2)**

Records of insurance claim negotiations are exempt from inspection until termination of litigation and settlement of all claims.

**Section 744.708(2)**

Personal or medical records of a ward of a public guardian are limited access.

**Section 760.40(2)(a)**

DNA analysis results held by a public entity are exempt from inspection except as provided in the subsection.

**Section 760.50(5)**

Information relating to employee medical conditions covered by health or life insurance provided or administered by the employer are exempt from inspection.

**Section 768.28(16)(b)**

Claim files maintained by risk management programs are exempt from inspection except as provided by this subsection, until final determination (see section).

**Section 768.28(16)(d)**

Minutes of certain meetings and proceedings (see section) of a risk management program are exempt from inspection until termination of all litigation.

**Section 794.024**

Photograph, name or address of a person alleged to be a victim of an offense described in this chapter (sexual battery), chapter 800 (lewdness, indecent exposure), s. 827.03 (aggravated child abuse), s. 827.04 (child abuse), or s. 827.071 (sexual performance by a child).

**Section 794.03**

Unlawful to publish or broadcast information identifying sexual offense victim.

**Section 815.04(3)(a)**

Data, programs or supporting information, which is a trade secret as, defined in s. 812.081, which is part of a computer system held by an agency as defined in Chapter 119, is exempt from inspection.

**Section 914.27**

Confidentiality of victim and witness information.

**Section 934.33(7)**

Specified identifying information regarding the installation and use of a pen register or trace device.

**Section 937.028(1)**

Fingerprints; missing children.

**Section 943.046(1)**

Notification of criminal offender information.

See also:

**Drivers Privacy Protection Act, 18 U.S.C. § 2721 et. seq., (Public Law 103-322), Prohibition on release and use of certain personal information from State motor vehicle records.** In summary:

In General any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained in connection with a motor vehicle record including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions. "Motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles. "Person" means an individual, organization or entity, but does not include a State or agency thereof; and "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.

# **CITY OF KEY WEST POLICY AND PROCEDURE**

## **SUBJECT: Records Management**

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## **I. STATEMENT OF POLICY**

The City of Key West (City) assures compliance with all State, Federal and Local requirements for the management of Florida Public Records Law, which provide a clear mandate for public agencies to manage public records in a professional manner. To address the complexities associated with Public Records management in the State of Florida, a comprehensive records and information management program is an essential component of any business entity, public or private. It is, therefore, critical to define the scope of the program; and especially to define the term “record.”

## **II. DISSEMINATION OF POLICY**

The City recognizes that knowledge and understanding of the Public Records Management Policy is crucial to its effective implementation. Therefore, the Board will take steps to disseminate to the work force and the community, its policy to include annual training of City staff through the Record Coordinator network.

### **A. INTERNAL DISSEMINATION OF THE CITY’S RECORDS MANAGEMENT POLICY**

A copy of this Policy will be made available to all employees.

### **B. EXTERNAL DISSEMINATION OF THE BOARD’S RECORDS MANAGEMENT POLICY**

This Policy is available to any person as governed by the Florida Public Records Law, Chapter 119, F.S.

## **III RESPONSIBILITY FOR IMPLEMENTATION OF THE PROGRAM**

The Agency is obligated to ensure all records, including digital and electronic (email) communications are retained and disposed of in accordance with retention schedules as documented on the Agency’s Disposition List. This List is prepared by the Agency RMLO and distributed to Agency Record Coordinators. The Agency is in a position to document on the Disposition List with particularity and specificity the disposition of Public Records to include beginning and ending dates as required by Chapter 1B-24, F.A.C. This includes the opportunity to mitigate disposition based on Agency requirements and still comply with Chapter 1B-24, F.A.C. All elected and appointed officials, the RMLO and Record Coordinators are responsible for the implementation of the Records

Program. All employees are required to comply. Section 257.36(5), Florida Statutes directs each agency to establish and maintain an active and continuing records management program to include scheduling and disposition of records. Public Records Law, Chapter 119, Florida Statutes, provides in part for access, control, storage, preservation and disposition of all records of a Public Agency. Chapter 1B-24 of the Florida Administrative Code, as amended on February 20, 2001, eliminated prior approval of the Bureau of Archives and Records Management for destruction of public records and requires agencies to certify to the Bureau compliance with retention requirements.

## IV DEFINITIONS

**Public Records** means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, 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.” It is critical to understand that format, media type or duplication does not affect the public record status of information created or received by a public agency. The requirements of this Plan apply to hardcopy as well as digital records.

**Copy of Record** or Record (Master) Copy means public records specifically designated as the official, retention copy. For email created *within* the Agency, the office of origin has the copy of record. For email *received* by the Agency from outside the Agency, the unit which performs the last administrative act has the copy of record.

**Duplicate Record** means all reproductions of copy of record or record (master) copies, prepared simultaneously or separately, which are designated as not being the copy of record, therefore, recipient emails from Agency generated account holders.

**Record Series** means a group of related documents arranged under a single filing arrangement or kept together as a unit because they relate to the same subject, form or activity.

**Administrative Support Records** consists of records accumulated relative to internal administrative activities rather than the functions for which the office exists. Normally these records document day-to-day management. This series does not serve as the official documentation for audit purposes.

**Administrator Records: Public Agency/Official** consists of office files documenting the substantive actions of elected or appointed officials and

constitute the official record of an agency's performance of its functions and formulation of policy and program initiative.

**Correspondence and Memoranda: Administrative** are routine documentation of a general nature but do not create policy or procedure or document the business of a particular program or act as a receipt. Correspondence and memoranda other than administrative are filed into the related case file or project file.

**Correspondence and Memoranda: Program Policy Development** consists of correspondence and memoranda documenting policy development, decision-making, or substantive programmatic issues, procedure, or activities.

**Supporting Documents** means public records assembled or created to be used in the preparation of other records which are needed to trace actions, steps, and discussions covered in the final or master record. Supporting Documents support conclusions in other records.

**Drafts and Working Papers** are preliminary or developmental before completion as a final product.

**Transitory Messages** consists of those records created primarily for the communication of information as opposed to communications designed for the perpetuation of knowledge. This data does not set policy, establish guidelines or procedures, certify a transaction or become a receipt. The informal tone of transitory messages might be compared to the communication that might take place during a telephone conversation or a conversation in an office hallway. These communications may include, but are not limited to emails, text messages, instant messages, voice mails, self-sticking note, telephone messages, routing slips, envelopes, duplicate circulars, etc.

**Personal and Private emails** include transmissions that are clearly not official business and are, consequently, not required to be recorded as a public record. Although received by a government system, the law opposes a mere possession rule. Such transmissions are not made or received pursuant to law or ordinance or in connection with the transaction of official business and are not public records.

**Duplicate or Convenience.** Duplicate copies of Official Records are Public Records that are transitory in nature, generally with short-term administrative value to the City. Preservation duplicates may be created or designated from existing copies for safekeeping of the Public Record.

**Precursor/Intermediate.** Intermediate files and data, such as transitory/temporary notes used to assist in the formalization of data, are precursors of records ("preliminary copies") not in themselves intended as final

evidence of the knowledge to be formalized or perpetuated. In the absence of a final or completed version, the most recent intermediate file or copy of the data shall constitute the Official Record. Intermediate files are the digital equivalent of Precursors.

**RMLO.** City Records Management Liaison Officer designated in writing to the Florida Department of State. The RMLO coordinates the City's Records Program.

**Custodian.** The elected or appointed state, Agency, or municipal officer charged with the responsibility of maintaining the office having public records.

**Record Coordinators.** Employees of the City responsible for the coordination of Public Records activities.

**Record Storage Facility.** Any high-density facility, City owned or commercial for the storage of records with remaining retention yet little or no administrative value.

**Retention Schedule.** A listing of all records created or received by the City and retained based on legal, administrative, fiscal and/or historic value as specified by Florida Department of State General Schedules, or as approved by the Department of State for unique records held by the City.

**Disposition List.** A list of records eligible for destruction based on approved Retention Schedules, including Schedule and Item Number, Record Series Title and eligible inclusive dates.

**Actual cost of duplication** means the cost of the material and supplies used to duplicate the record, but do not include the cost of labor or overhead costs associated with such duplication

**Extensive** shall mean twenty minutes or more.

**Archival Records** is information of such Historic value to the City as to demand permanent retention and preservation. Archival Records are limited to analog formats, not requiring technology for conversion to a human readable format. Archival Records may not necessarily originate as a Public Records, however become such upon receipt by the City as provided by Chapter 119, F.S. Archival formats include paper, photographs, films, Mylar or other stable media upon which analog data has been encoded - either published or unpublished. Archival Records have value based on informational content, and as artifacts and exhibits. The City Archives is the central repository for the Archival Records, and shall preserve and make available to the Public the permanent historic public and private records of the City in its custody.

**Non Records**, in addition to the description of personal and private emails, intermediate records, precursors, non records include unsolicited promotional items, spam, jokes, chain letters, advertisements and generally material classified as “junk mail” or Public Documents as defined by Chapter 257, F.S.

## V. EMAIL CATEGORIES/DISPOSITION

1. Administrator email records will be archived ten fiscal years. [Slightly longer than the required Department of State Retention for this Series of ten anniversary years. The Agency Attorney must determine the universe of “Administrator.”]
2. Internally generated recipient emails (duplicates) will be archived one fiscal year. [These are considered *duplicate* emails with retention of OSA.]
3. All other emails will be archived for five fiscal years. [This is the longest inclusive retention for *correspondence and memoranda*.]
4. Emails related to issues for which there is imminent or pending litigation or criminal prosecution are captured by the Agency Attorney or Agency Attorney staff. [A statement providing that records for which there is imminent or pending litigation are not included already exists on the Agency’s Disposition List. These emails become part of the *litigation case file*.]
5. Rules two and three will appear on page one of the Agency’s Disposition List.
6. A ten (10) day delay will be observed prior to archiving to allow account holders the opportunity to delete personal and private email and to delete email that has met retention as documented on the City’s approved Disposition List.

## VI. RECORDS DESTRUCTION

### PROCEDURE

#### Performed By:

#### Step/Action/Responsibility:

City RMLO:

1. Prepare Disposition List in accordance with Chapter 1B-24, Florida Administrative Code each October.

Record Coordinators:

2. Review unit assigned records to identify records eligible for destruction in accordance with City

generated Disposition List, verifying inclusive dates and record series titles. Submit revised List to City RMLO for review.

City RMLO: 3. Revise Disposition List based on Coordinators review, as appropriate and return List to Coordinators.

Record Coordinators: 4. Initiate disposal of Public Records documenting cubic foot volume destroyed using the following conversion chart, and forward List to City RMLO when complete, no later than September 30.

<u>Record Unit</u>	<u>Cubic Foot Volume</u>
10"x12"x15" box	1.0
Letter size drawer	1.5
Legal size drawer	2.0
Letter size 36" shelf	2.0
Legal size 36" shelf	2.5.

## VII. OFF-SITE RECORDS STORAGE

### PROCEDURE

#### Performed By:

#### Step/Action/Responsibility:

City RMLO: 1. Prepare Disposition List in accordance with Chapter 1B-24, Florida Administrative Code and City Procedure.

Record Coordinators: 2. Only records with remaining retention, yet virtually no administrative value should be considered for off-site or high density storage.

3. Records should be packed into uniform, one cubic foot boxes (10x12x15 inches) with a removable or hinged lid.

4. Every record within each box must have the same destruction date.

5. Records should be computer indexed. Data elements include: Record title(s), inclusive dates and Department name.

6. Records eligible for destruction as provided by the City's Disposition list must be destroyed, or written notification must be provided to the City RMLO sufficient to justify retention beyond retention.

City RMLO

7. Review and approve or disapprove Record Coordinators requests to delay eligible records destruction (see 6. above).

8. Destroy records retained in storage beyond retention for which no justification has been approved.

## **VIII. DIGITAL BACKUP**

IT will conduct backups of critical data on a Monthly, Weekly and Daily basis. Each month, a full backup will be removed from the City and stored off-site for restoration in the event of a disaster. Transfer of the monthly and weekly backup will be through an independent, bonded commercial courier using a locked storage container designed for magnetic media transfer for storage in an environment that meets or exceeds the requirements of Chapter 1B-26, F.A.C. Operating Systems and applications will be copied and retained off-site at the same facility storing the monthly and weekly backup for the period of time provided by the City's Retention Schedule. The backup types and frequency are as follows:

### **Full Backup**

One full backup set per month will be run. This set will be removed from the building as described above. Full backup media together with data will be destroyed or overwritten after 90 days.

### **Weekly Backup**

A full data backup will be run every Friday with four rotation sets in the full backup rotation. Each week the oldest backup set will be over written. This backup rotation will allow for the restoration of any data up to five weeks old with the addition of the off-site backup set. The weekly backup media will be replaced with new media as required.

## **Nightly Backup**

An incremental backup will be run nightly, Monday through Thursday. This backup records any data that has changed on the server since the last full backup, which occurs during the weekend. Incremental backups provide the ability to restore data from the previous day that has changed since the weekend allowing for the restoration of the most recent version of a given file.

Backup drives will be cleaned on a weekly basis, or as recommended by manufacturer using special tape drive head cleaning tapes. Cleaning frequency shall be amended based on demand as determined by the IT Director.

## **IX. ARCHIVES COLLECTION DEVELOPMENT**

## **X. PUBLIC RECORD REQUEST**

It is the policy of the City to permit the Public Record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian or record coordinator of the public records, absent an exemption to the contrary. *Any person* includes City employees and City Officials when the record request is clearly beyond the scope of the duties, responsibilities and official business of the requestor.

At all times, the custodian or record coordinator shall provide safeguards to protect the contents of Public Records from alteration and to prevent disclosure or modification of those portions of Public Records which are exempt or confidential from section 24, Article 1 of the State Constitution.

The custodian or record coordinator shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law, or, if a fee is not prescribed by law; for duplicated copies of not more than 14 inches by 8.5 inches, upon payment of not more than 15 cents per one-sided copy. For each two-sided duplicated copy of not more than 14 inches by 8.5 inches, upon payment of not more than 20 cents for each two-sided duplicated copy; and for all other copies, upon payment of the actual cost of duplication of the record. The custodian or record coordinator may charge up to \$1.00 per copy for a certified copy of a public record.

When the nature or volume of public records requested to be inspected, examined, or copied is such as to require *extensive* use of information technology resources or *extensive* clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to

the cost of duplication, a special service charge, which shall be based on the cost incurred for such extensive effort. To comply with this provision, the custodian or record coordinator shall collect the estimated service charge in advance in addition to the fee for duplication. The service charge shall be calculated using the hourly wage of the employee performing the service. If the estimated fee for duplication and service charge represent an overpayment upon completion of the effort, a refund shall be made to the requestor. If the estimated fee for duplication and service charge represent an underpayment upon completion of the effort, the custodian or record coordinator shall collect the remaining balance due prior to delivery of the Public Record.

When the custodian or record coordinator and the requestor fail to agree as to the appropriate charge, the charge shall be determined by the custodian of the Public Record. When the custodian or record coordinator and the requestor fail to agree as to the personal and private or non-record status of what appears to be a Public Record, the status shall be determined by the custodian of the Public Record. When the custodian or record coordinator and the requestor fail to agree as to the personal or official business status of a request, the status shall be determined by the custodian of the Public Record in consultation with the City Manager. If the requestor in this instance is the City Manager, then the status of the request shall be determined by consultation with the Agency Attorney. When the custodian or record coordinator and the requestor fail to agree as to the exemption to access for a Public Record, the exemption status shall be determined by the City Manager.

## **XI. GOALS**

1. retention and disposition of public records in accordance with all state and federal requirements (*including, but not limited to, Chapter 119 and 257, F.S. and Chapter 1B-24, F.A.C., and Chapter 1B-26, F.A.C.*).
2. management access to both active and inactive records in an accurate and timely fashion (to include a filing system and consideration of imaging potential);
3. retention of all records under secure conditions, preventing unauthorized access by both employees and third parties;
4. protection of all records from physical calamity and decay;
5. provision for the timely destruction of records at the end of their retention period in a secure manner;
6. conversion of long retention records to microfilm;

7. provision for disaster recovery; and
8. achievement of these goals in the most cost-efficient manner available.