



Office of the Town Clerk

POLICY: PROCESSING OF PUBLIC RECORDS REQUESTS

EFFECTIVE DATE: March 13, 2012 (Approved by Town Council March 12, 2012)

Objective: The objective of this policy is to establish standard procedures for efficient and timely processing of public records requests and to ensure that public records requests are processed in accordance with the requirements of Chapter 119, Florida Statutes, also known as the Public Record Act.

Policy Statement

Under Florida Law, any material prepared in connection with official business that is intended to perpetuate, communicate or formalize knowledge, is a public record. Included are: documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristic, made or received in connection with the transaction of official business by the Town of Howey-in-the-Hills.

Also, Florida law requires agencies to furnish public records in the format requested if they already exist in that format. If not, the law does not require agencies to convert them to another format to fulfill a public records request. For example, if the records exist only on paper and you are requested to e-mail them, you are not required to scan them in order to e-mail them. Conversely, if they exist only in electronic format and photocopies are requested, you are not required to print them in order to copy them.

Public records may be inspected and examined by any person desiring to do so at any reasonable time, under reasonable conditions and under the supervision of the Town Clerk (records custodian) or designee. Reasonable conditions mean that inspection must be done during normal business hours of the Town of Howey-in-the-Hills, excluding identified Town holidays. The Town is not required to compile or create a new record, just to make the requested existing records available. In addition, the Public Records Act does not require the Town to provide explanations of documents.

Responsibilities:

The Town Clerk's Office is the official custodian of the Town of Howey-in-the-Hills records, and thus, will be responsible for logging and tracking public records requests for all departments in the Town of Howey-in-the-Hills, with the exception of those records that are "readily available documents."

Any request to a Town department for a public record that is considered a "readily available document" will not be entered into the Town Clerk's public records logging and tracking system. "Readily available documents" are those documents that are easily accessible and retrievable within a Town of Howey-in-the-Hills department and do not require additional

review in order to determine whether they contain exempt information, such as agendas, meeting minutes and ordinances.

Procedure for Processing Public Records Requests:

Public records requests, other than “readily available documents” described above, will be coordinated by the Town Clerk or designee, acting as the Public Records Coordinator (PRC), using the following steps: *(For additional information this process is outlined in a flow chart - Attachment 1.)*

1. All public records requests will be logged into the Town Clerk’s Office logging and tracking system for public records. However, if the request relates to Howey-in-the-Hills Police Department, the PRC will refer the request to HPD for direct handling. In addition, if a public records request is received from the media, the Town Mayor is to be notified. A copy of any records provided to the media will also be provided to the Town Mayor.
2. The PRC determines the appropriate department or custodian of record and sends the request to the department liaison (point of contact) for handling. A deadline for the department to submit the information is established by the PRC, based on the volume or extent of the amount of records to be retrieved. If it is determined that extensive research is needed and the time exceeds 15 minutes, a charge will be applied and a deposit will be required (see additional explanation for costs and charges and payment of fees, etc.).
 - a. If the department involved is Human Resources Department, any necessary redaction of exempt information will be performed by the Town Clerk.
3. The department provides the public records to the Town Clerk or designee by the established deadline for further review, redaction if required, calculation of fees and deposit if any.
4. If the nature or volume of public records requested to be inspected, examined, or copied require extensive use of information technology resources or extensive clerical or supervisory assistance by Town employees, the Town Clerk’s Office shall require a deposit or payment in full from the requestor prior to fulfilling the public records request.
5. If the custodian of the record is the Town Clerk’s Office, the Town Clerk will gather the information being requested requested.
 - a. If the record contains exempt information and needs redaction of any portion of the record, the Town Clerk will perform the redaction of the record.

Exempt Records:

Certain public records are exempt from the public records law and, are therefore, not subject to public inspection. Requests for documents which may contain information that are exempt from disclosure under Florida law may be delayed until the records can be reviewed and redacted, as necessary. In addition, upon request, the custodian of the record must state in writing and with particularity the reasons for the conclusion that the record is exempt from inspection. (FS 119.07(1)(f)).

The legislature has often amended the public records law, making some materials exempt from public inspection that were not exempt previously, and removing the exempt status from certain materials that were previously considered exempt. Therefore, when in doubt as to what is or what is not exempt, check with the Town Clerk.

All public records requests pertaining to any matter for which litigation is pending must be reviewed by the Town attorney prior to release. The Town Clerk will also contact the Town attorney if they cannot determine if a matter is in litigation or if they are genuinely uncertain as to whether a particular record is or is not a public record or is a public record exempt from disclosure.

Guidelines for providing a public record:

Florida law notes that every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. Requests to view public records do not have to be in writing and may be made by telephone. Florida law provides that a custodian of public records has no right to require a person to state the reason why an individual desires to inspect or copy a public record.

A person requesting a public record does not have to fill out a form to do so. Even though it cannot be required of them, all requestors will be encouraged to put their records requests in writing. This should assist staff in clarifying the exact scope of the request. Requestors should be asked to specify whether they wish to simply inspect records or obtain copies.

Regardless of whether or not the designated custodian was served with a records request, Section 119.07(1) (a), Florida Statutes, imposes a duty of disclosure upon “every person who has custody of a public record.”

1. The following guidelines should be used when handling a request of public records:

- a. Determine exactly what the person is requesting, including what record(s) he/she is looking for and whether he/she wants to view the records or wants a copy of the records. If it is unclear what is being requested, contact the person by phone, or send the person a letter or e-mail requesting clarification or asking him/her to contact you.
- b. Determine whether the documents requested are public records, and if so, identify if any or all of the information is exempt or confidential.
- c. Determine what department has custody of the records.
- d. Determine the location of records, e.g., in a department or at an off-site Town facility, or in the possession of a private entity.
- e. Determine the format in which the requestor wants the records. Note: Florida law requires agencies to furnish public records in the format requested if they already exist in that format. If not, the law does not require agencies to convert them to another format to fulfill a public records request. For example, if the records exist only on paper and you are requested to e-mail them, you are not required to scan them in order to e-mail them. Conversely, if they exist only in electronic format and photocopies are requested, you are not required to print them in order to copy them.

However, if acceptable to the requestor and not unreasonable in nature, electronically maintained public records may be provided in print format.

2. Review the requested records for any confidential or exempt information.
 - a. Be particularly aware of social security numbers, medical information, certain addresses and other personal information on protected persons and their family members (e.g., current or former law enforcement officers, code enforcement officers, and others specifically exempted in Chapter 119 or elsewhere in Florida Statutes).
 - b. Redaction will be administered by the Town Clerk's Office. The statutory citation for any exempt or confidential information must be provided in writing, if requested.

Requests for e-mail and other records:

In order to provide timely and accurate information, the requestor of e-mails should provide the date range and key words for the search.

When a public records request is received for e-mails or other records relating to a Town Council member or Town employee, the Town Council member or respective department director will be notified by the PRC, as a courtesy, that such a request was received. However, providing this information as a courtesy, will in no way delay the processing of the request. When requesting copies of e-mail, members of the public or news media must make a request directly to the Town Clerk. No requestor shall be provided direct access to e-mail archives. The PRC will research the e-mail archives, review the e-mail retrieval for redaction or exempt information, and if appropriate, prior to release of the e-mail to the requestor.

Since access to public records is a statutory right, the custodian of the public record for the applicable Town department is without authority to limit access to them by claiming interference with the day to day conduct of public business.

Departments receiving a public records request must respond to the Town Clerk's Office as soon as possible as to whether they have any of the requested documents and what the estimated retrieval time will be. The Town Clerk's Office will notify the requestor of the estimate of time to fulfill the request and that a deposit or charges must be paid in advance of the requestor's receipt of the records. For extensive requests, the Town shall require a deposit or advance payment prior to beginning retrieval. Any over-payment of retrieval charges will be refunded to the requestor.

If the requested public records are not within the Town department receiving the request from the PRC, the request should be forwarded to the appropriate Town department, with copy to the PRC.

Inspection of all public records shall be supervised by the custodian of the public record or their designee.

Fees

The fees that may be charged for the copying of public records are in some cases provided by Statute. If a fee is prescribed by law, the custodian of the record must charge that fee. If no fee is prescribed by law, then the custodian of the public record may charge the actual cost of

duplication of the records. It is important that fee assessments be applied consistently across all Town departments. The following charges that are deemed to represent the actual cost of material, supplies, and equipment involved, shall be charged for Town of Howey-in-the-Hills public records:

- a. Fifteen (15) cents for each one-sided copy of each page of not more than 14 inches by 8 ½ inches of the public record.**
- b. Twenty (20) cents for each two-sided copy.**
- c. For all other copies, the actual cost of duplication of the public record.**
- d. Five (5) dollars for each copy of data CD.**
- e. One (1) dollar for each certified copy of a public record.**
- f. If materials are to be mailed, the actual cost of postage may be added to other charges indicated in the preceding paragraph.**

If 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 a Town department, additional charges may be assessed, which is to be reasonable and is to be based on the cost incurred for the extensive use of such resources of labor in furnishing or copying the information requested. The provision of this paragraph does not apply to materials routinely exchanged within the Town or between governmental agencies, officers or persons in the performance of assigned duties or normally provided by the Town of Howey-in-the-Hills in carrying out its statutory responsibilities.

Very old public records that the Town of Howey-in-the-Hills has lawfully destroyed pursuant to state statute obviously cannot be provided. It is not unreasonable to query the person and ask what in particular is being sought so that the person may be directed to the correct record, thus saving the person and the Town a lot of time and trouble in needlessly searching through immaterial matters. If the requestor wants voluminous records copied and/or research, the Town Clerk shall request payment in advance or a deposit to cover the request before any reproduction is undertaken. In the same regard, if an inordinate amount of resources and staff assistants are required to produce the records requested, the requesting individual may be charged pursuant to statute, a special service charge which shall be reasonable and based on the actual cost incurred in obtaining the individual's records request.

Training:

Periodic training for processing public records requests will be scheduled by the Town Clerk's Office for department representatives involved in public records request processing.

Annual refresher training on public records and the Sunshine Law will be scheduled for applicable employees.

Penalties:

The law provides that if a civil action is filed against a public agency to compel compliance with the public records law and the court determines that the agency unlawfully refused to permit a public record to be inspected, examined, or copied, the court shall assess an award against the

agency responsible, plus the reasonable cost of enforcement including reasonable attorney's fees. Moreover, any person willfully and knowingly violating any provisions of the Public Records Law is guilty of a misdemeanor of the first degree, punishable by one year in prison and/or a fine not to exceed \$1,000.

CHECKLIST FOR MOST COMMON EXEMPTIONS

Currently, there are over a thousand exemptions listed in the Florida Statutes. The following is a list of common exemptions:

1. Social Security numbers (**FS § 119.071(5)(a)**).
2. Medical information pertaining to a prospective, current, or former officer or employee of the Town of Howey-in-the-Hills which, if disclosed, would identify that individual (**FS § 119.071(4)(b)**).
3. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals, until such time as the agency provides notice of a decision or intended decision or within 10 days after the bid or proposal opening, whichever is earlier. (**FS § 119.071(1)(b)(1a)**).
4. Information contained in e-mail or other documents pertaining to active criminal investigations (**FL § 119.071(2)(c)-(f) & (h)-(j)**).
5. Bank account numbers and debit, charge and credit card numbers (**FS § 119.071(5)(b)**).
6. Home addresses, telephone numbers, social security numbers and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, ... and 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 ... (**FS § 119.071(4)(d1)**).
7. Opinion work product: a public record which was prepared by an agency attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Town of Howey-in-the-Hills and prepared exclusively for civil or criminal litigation or adversarial administrative proceedings or prepared in anticipation of imminent litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or proceedings (**FS § 119.071(1)(d1)**).
8. Work products developed by the Town of Howey-in-the-Hills in preparation for and during collective bargaining negotiations are confidential and exempt (**FS § 447.605(3)**).
9. Trade secrets such as the whole or any portion of phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: 1) secret; 2) Of value; 3) For use or in use by the business; and 4) Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it. (**FS § 812.081(1)(c)**).
10. Information relating to the security system plans (including records, information, photographs, diagrams, recommendations, etc.) for any property owned by or leased to the Town of Howey-in-the-Hills and information relating to the security plans for any privately owned or leased property is confidential and exempt with specified exceptions (**FS § 119.071(3)(a) and FS § 281.301**).
11. Data processing software obtained by the Town of Howey-in-the-Hills under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive, although the designation of agency-produced software as sensitive shall not prohibit the Town of Howey-in-the-Hills from sharing or exchanging such software with another public agency (**FS § 119.071(1)(f)**).
12. Audit work papers and notes, until such time as the audit is final. (**FS § 119.0713(2)**).