



COUNTY ATTORNEY'S OFFICE  
JEFFREY J. NEWTON, *County Attorney*

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<http://www.ocfl.net>

APPROVED BY ORANGE  
COUNTY BOARD OF COUNTY  
COMMISSIONERS

BCC Mtg. Date: Aug. 16, 2016

## MEMORANDUM

TO: Mayor Teresa Jacobs  
and  
Board of County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*  
Sawsan Mohiuddin, Assistant County Attorney *SM*  
**Contact: (407) 836-7320**

DATE: July 25, 2016

SUBJECT: **Consent Agenda Item for the Board Meeting on  
August 16, 2016**  
*Proposed Revised Administrative Regulations 2.06, titled "Public  
Records"*

Attached for your review is a proposed revisions to Administrative Regulation 2.06.

**I. EXPLANATION & SUMMARY OF PROPOSED REGULATION:**

At the request of the Orange County Administrator's Office, the attached regulation was reviewed in depth and revisions were made to ensure that the regulation is consistent with current practices and procedures.

It is my intent to place the proposal on the August 16, 2016, Consent Agenda for approval by the Board of County Commissioners. Please advise me of any questions, comments, or modifications you may wish to make prior to that meeting.

**II ACTION REQUESTED:**

Approval of proposed revisions to Administrative Regulation 2.06, titled  
"Public Records"

AMC  
Attachment

c: Ajit Lalchandani, County Administrator  
Eric Gassman, Chief Accountability Officer

*Deputy County Attorney*  
Joel D. Prinsell

*Senior Assistant County  
Attorneys*  
Elaine Asad  
Lila McHenry

*Assistant County  
Attorneys*

Andrea Adibe  
Roberta Alfonso  
Anthony Cotter  
Whitney E. Evers  
Wanzo Galloway, Jr.  
Erin E. Hartigan  
Georgiana Holmes  
Katherine W. Latorre  
Scott McHenry  
Sawsan Mohiuddin  
Scott Shevenell  
William Turner

*Legal Administrative  
Supervisor*  
Anna M. Caban

*Senior Paralegal*  
Kimberly Cundiff

*Paralegals*  
Melessia Lofgren  
Maria Vargas, ACP

procedures:

1. User agencies will be billed via the indirect cost plan.

2. All non-BCC departments grants and non-county agencies will be invoiced for payment.

**FOR MORE INFORMATION CONTACT:** Graphics Section, Communications Division

**REFERENCE:** Administrative Regulation 5.02.01

**APPROVED:** 9/18/89

**REVISED:** 6/27/06

## **2.06 PUBLIC RECORDS**

### **I. POLICY**

Orange County adopts Chapter 119, Florida Statutes, hereinafter referred to as the "Public Records Law," including all exemptions provided in the Florida Statutes, as presently enacted and, hereafter amended, and as may be construed by the courts and Attorney General, as the County's policy regarding the public's right to inspect and copy public records. Pursuant to section 119.011(12), Florida Statutes, "public records means all documents, papers, letters, books, maps, 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 Orange County Code] or in connection with the transaction of official business by any agency." The term "public records" is not limited to traditional written documents.

It is the policy of Orange County that all public records shall be open for inspection by any person at any reasonable time and under reasonable conditions as provided by Section 119.07(1)(a), Florida Statutes. No person shall be required to show his/her purpose or special interest as a condition to inspect public records. A request for public records may be made verbally or in writing.

Each official and employee is the custodian of his or her own public records, including any public records created or existing on the official or employee's personal mobile device or other personal property, such as a computer. As a result, each official and employee is responsible for maintaining his or her own public records and complying with the Public Records Law.

### **II. PROCEDURES**

A. Each and every department and division shall designate a records custodian who shall be responsible for the appropriate handling of all public records requested from the department or division. The following departments or divisions shall be the official Orange County records custodians for the particular type or category of public records described below:

1. The Information Systems and Services (ISS) Division shall be the official records custodian for all telephone call records, transitory telephone messages, voicemail messages, electronic mail (e-mail), and other electronic messages sent to or from a County-issued land-line telephone or computer, or to or from a County-issued cellular phone or instant communication device (cumulatively, "mobile device"). The ISS Division is not the records custodian for telephone call records, telephone messages, voicemail messages, email, and other electronic messages sent to or from an official's or employee's personal devices or other equipment, including but not limited to, telephone, computer, or mobile device; the official or employee who owns and uses such a device to transact County business is the custodian of those records.

2. The Central Human Resources Division maintains the official human resource records of all Board of County Commissioners employees and shall be the official records custodian for employee records.

3. The Office of Management and Budget (OMB) Division maintains all budget and fiscal documents on behalf of the Board of County Commissioners and shall be the official records custodian for budget and fiscal information pertaining to County funds.

4. The Purchasing and Contracts Division maintains all procurement records, bid/RFP documents, and contracts of the Board of County Commissioners and shall be the official records custodian for information pertaining to purchase orders, contracts, and procurement information.

5. The Orange County Clerk to the Board of County Commissioners maintains the official records of the Board of County Commissioners and is considered to be the official records custodian of those documents.

6. Departments and Divisions maintain their own records and documents and shall be the official records custodians for their own public records.

B. Upon receipt of a request to review public records, the request shall immediately be forwarded to the appropriate records custodian for handling. Request to review public records encompassing records maintained by a department or division not specifically addressed above shall be handled by the appropriate department/division records custodian. Upon receipt of a request to review public records, the Department Director or Division Manager and the County Attorney's Office shall be notified and the request shall immediately be forwarded to the designated records custodian for appropriate handling.

C. In situations involving potential or actual litigation, administrative proceedings, or any form of dispute, the County Attorney's Office shall be notified and will act as a liaison to coordinate the public records production, examination, or inspection with the opposing counsel or the adverse party and County staff. In addition, the custodian shall notify each employee who sent, received, or otherwise generated the requested records and the employee's department director or division manager.

D. All designated records custodians shall be responsible for becoming familiar with the Public Records Law and should attend continuing educational training regarding changes in the Public Records Law.

E. Records custodians shall honor all requests to inspect or examine public records (other than those exempted by Florida Statutes) at any reasonable time, under reasonable conditions and under the supervision of the records custodian or his/her designee.

F. If the records custodian is unavailable or no longer employed with the County, the department director or division manager shall be responsible for ensuring that the request to review public records is processed in a timely fashion.

G. In the event that the requestor desires copies of any documents, the affected custodian shall charge \$0.15 per page, \$0.20 per double-sided copy, or \$1.00 per certified copy, as may be amended from time to time in Section 119.07(4), Florida Statutes, and other charges as established in the County Fee Directory, as may be amended from time to time. For any records request that requires special equipment or paper (such as county maps or aerial photographs), the County division, department or office may charge an additional reasonable charge for the labor and overhead associated

with the duplication. A special charge may be assessed, in addition to the actual costs of materials and supplies, when the nature or volume of the records requested requires extensive use of information technology resources, extensive clerical or supervisory assistance by County personnel. "Information technology" shall be defined to include data processing hardware, software and services, communications, supplies, personnel, facility resources, maintenance, and training.

For the purpose of this Regulation, "extensive" shall mean that it will require more than 15 minutes to locate, review the records for confidential or exempt information, copy and re-file the requested material. Any special service charge shall be computed to the nearest quarter of an hour exceeding 15 minutes and shall be based on the lowest current rate of pay for the pay grade of the person who performed the services, and other charges, as established in the County Fee Directory, as may be amended from time to time. The special service charge, all other fees and charges authorized by the Public Records Law, will be coordinated with the Office of Management and Budget.

H. The designated records custodian shall be responsible for the verification that all fees and charges have been paid prior to the release of any copies.

I. Any specific information that is deemed or classified as confidential or exempt shall NOT be available for public inspection. Any specific information that is exempt from the Public Records Act may be redacted from the public record leaving the remainder of the record available for public access at the discretion of the record custodian or the County Attorney's Office. Regarding emails, custodians are entitled to rely on the information listed in the "Subject" line of an email to categorize an email as confidential, exempt, or nonexempt, unless the custodian has information to the contrary. Given the volume of emails that are transmitted on a daily basis, neither ISS nor the County Attorney's Office has a duty to independently assess each email to determine whether all or part of an email contains confidential or exempt information. The duty to protect confidential or exempt information rests with the employee sending, receiving, or otherwise generating the public record.

J. Should a request be received for any record statutorily exempt from public disclosure, the designated records custodian shall advise the requestor of the specific reason for denial including the statutory

citation to the exemption created or afforded by the Florida Statutes.

K. Due to the exhaustive and ever-changing list of public records exempted from disclosure by the Florida Statutes, the designated records custodian should contact the County Attorney's Office regarding any questions concerning public records disclosure requests and related exemptions.

L. The Human Resources Division, in coordination with the Orange County Attorney's Office, shall provide to all new Orange County employees a public records disclosure overview during employee orientation.

M. Voicemail messages are intended to be brief, transitory messages instead of non-transitory messages (as more fully described and explained in Administrative Regulation 11.06,II,G), and therefore transitory voicemail messages need to be retained by an employee/official only until obsolete, superseded, or the administrative value is lost. Land-line voicemail messages shall not be retained by the ISS Division for longer than ten (10) days. In the event an employee/official receives a non-transitory voicemail message, a transitory voicemail message on his/her mobile device or a transitory voicemail message that will not be obsolete within ten (10) days, the recipient shall be responsible for retaining the content in accordance with the Public Records Law.

N. The County will not expect, encourage, or require an employee/official to provide or use a personal mobile device to perform any of the employee's/official's assigned job duties or responsibilities. County business transacted on a personal mobile device may be subject to disclosure under the Public Records Law. Furthermore, transacting County business on a personal mobile device may result in a request to inspect the personal mobile device or its contents, thereby placing in jeopardy the privacy of communications that do not meet the definition of "public record" under the Public Records Law. If an employee/official decides to use his/her personal mobile device to transact County business, it shall be the employee's/official's responsibility to take all appropriate steps at his or her own cost to ensure that any public record generated on such device is retained consistent with the Public Records Law and this Administrative Regulation 2.06 so that, if necessary, the Public Record may be produced for inspection and examination upon request.

However, nothing in this subparagraph N shall be construed or interpreted to mean that an employee/official who uses a personal mobile device to conduct County business forfeits any individual rights to protect against or prevent the disclosure of communications that the employee/official believes do not meet the definition of a "public record."

**FOR MORE INFORMATION CONTACT:** County Attorney's Office

**REFERENCE:** Chapter 119, Florida Statutes, Government in the Sunshine Manual; Orange County Fee Directory

**APPROVED:** 9/21/87

**REVISED:** 6/27/06; 07/29/08; 02/26/13

## 2.06.01 DISPOSITION OF PUBLIC RECORDS

### I. POLICY


No public official or County employee may mutilate, destroy, sell, loan or otherwise dispose of any public records without the consent of the Division of Library and Information Services (DLIS) of the Department of State. Any willful violation is a misdemeanor of the first degree, punishable as provided for in the Florida Statutes.

### II. PROCEDURES

#### A. Definitions

- **CUSTODIAN:** Elected or appointed State, County or Municipal Officer charged by law with the responsibility of maintaining the office having public records.
- **DISPOSAL AUTHORIZATION:** Permission by DLIS to dispose of scheduled records. (Any disposition of records without proper authority is a misdemeanor of the first degree.)
- **DLIS:** Division of Libraries and Information Services of the Department of State of the State of Florida.
- **PUBLIC RECORDS:** All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other

**PROPOSED REVISIONS**  
**01/05/16**

 <b>ORANGE COUNTY</b> <b>ADMINISTRATIVE REGULATIONS</b>	No.: 2.06
	Date: 09/21/87
	Approved By: BCC Revised: 6/27/06; 07/29/08; 02/26/13
Title: <b>PUBLIC RECORDS</b>	Page 1 of 5

**I. POLICY**

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C. In situations involving potential or actual litigation, administrative proceedings, or any form of dispute, the County Attorney's Office shall be notified and will act as a liaison to coordinate the public records production, examination, or inspection with the opposing counsel or the adverse party and County staff. In addition, the custodian shall notify each employee who sent, received, or otherwise generated the requested records and the employee's department director or division manager.

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**FOR MORE INFORMATION CONTACT:** County Attorney's Office

**REFERENCE:** Chapter 119, Florida Statutes; Government in the Sunshine Manual; Orange County Fee Directory