

## **PUBLIC RECORDS POLICY PURSUANT TO CHAPTER 132 OF N.C.G.S**

**Effective Date:** 11/4/2019

### **A. PURPOSE**

The purpose of this Policy is to assist County officials, employees, and citizens in understanding and complying with the public records law, including (1) record retention, (2) record disposition and (3) record requests. This Policy is designed to provide guidance only, and in the event of conflict between this Policy and the law, the law prevails. This Policy does not create any new or additional rights or obligations for any person or entity and is not designed to create a higher standard than the laws pertaining to public records establish. This Policy may be reviewed annually and updated as needed subject to final approval by the County Manager.

### **B. KEY DEFINITIONS**

**Actual cost:** The sum of the direct, chargeable costs related to the copying and production, but excluding costs that would have been incurred if a request to copy the record had not been made.

**Board:** County elected or non-elected, appointed bodies (includes all boards, commissions, committees, task forces, etc.)

**Burdensome copying:** The copying, compiling, and/or producing records in response to a request that requires extensive use of information technology resources or extensive clerical or supervisory assistance by personnel.

**Copyright:** The legal right granted to a person for exclusive publication, production, sale or distribution of materials.

**Employee:** All County employees, including temporary and part-time employees. Volunteers and persons working for a temporary employment service (“temps”) are also subject to this Policy, but the County employee supervising the volunteer or “temp” is also responsible for the public records of such volunteer or “temp.”

**Larger than standard size original:** An original page wider than 11 inches or longer than 14 inches.

**Network:** A system by which many computers are connected together. The County of Davie has a network that allows access to authorized areas on a central storage device and to access printers and shared drives.

**Non-paper copying:** Copying records using any format, such as CD /DVD, or other data storage, that does not use a photocopy machine to produce copy images.

**Personnel Costs related to burdensome copying:** An hourly rate equal to the gross hourly wages of the employee(s) who worked on the applicable records production multiplied by the number of hours worked by the employee(s) during the production.

Public Record: Those records as set forth and defined in N.C.G.S. 132-1.

Standard size copy: An 8.5 x 11 inches or 8.5 x 14 inches copy made from an original page that is not longer than 8.5 inches in one dimension and not longer than 14 inches in the other dimension.

Official(s): All County elected/appointed County Commissioners and appointed board/commission, committee and task force members.

Official Record Custodian (also referred to as "official custodian"): County of Davie Department Directors are responsible for all County business related records created/received by all staff in the particular Department who are responsible for maintaining the project or subject file to which a record(s) relates. Official custodians are responsible for ensuring departmental compliance with the Records Retention and Disposition Schedule and records requests.

Primary Record Custodian (also referred to as "primary custodian"): Employees and officials who create and receive records are responsible for managing the records according to the Records Retention and Disposition Schedule and disclosing the records upon request.

Protected Record: A record that is exempted from the definition of public records and a record for which there is statutory or other authority permitting or requiring that the information not be disclosed.

Public Record: All records created or received by the County officials and employees while transacting official County business as defined by N.C.G.S. 132.

Record Request: Includes any request for records, including subpoenas and discovery (as defined herein).

Records Retention and Disposition Schedule (hereinafter "Schedule"): The County and State of North Carolina adopted document that identifies and describes the County's records and provides retention and disposition instructions.

Redact: To remove confidential or protected information from a record before releasing the record in response to a records request.

Retention: As used in this Policy, the minimum length of time the County keeps a record according to the Records Retention and Disposition Schedule.

Special Service Cost: the cost associated with the extensive use of information technology resources, including labor cost of the personnel providing these services, or for a greater use of information technology resources that is actually incurred by the County or attributable to the County.

Subpoena: An order of the court of a witness to appear at a specified place and time to testify and/or to produce records.

Transitory: Records that are ephemeral, temporary, or transient in nature and have only short-term administrative value.

## **C. PUBLIC RECORDS**

### **1. Public Records Defined**

With very few exceptions, all records created or received by officials and employees while transacting official County business are public records and must be retained, stored, disposed of, and made available for inspection and copying in accordance with the law. This applies to records in officials' and employees' homes and on home or personal computers if the record pertains to County business. The public records law is primarily contained in Chapter 132 of N.C.G.S. (Refer to Section E of this Policy for more information on retention and disposition of records.)

Public records include paper and electronic documents (including electronic messages), photos, videos, maps, computer files, computer communications and voice mail messages. Unless the purpose and content of a record is personal in nature and not related to the transaction of County business, it is a public record and should be managed according to the Schedule.

There are certain records that are exempted from the definition of public records, and there are certain public records that do not have to be disclosed. (Refer to Section C.4. of this Policy to read more about protected records.)

### **2. Transitory Records**

Transitory records are public records, but because of their nature, they do not have to be retained. Transitory records include (but are not limited to) messages with short-term or no administrative value, such as many, but not all, voice mails, self-sticking notes, facsimile cover sheets that do not contain substantive information, and telephone messages. Transitory records are created primarily for the informal communication of information and not to perpetuate or formalize knowledge. Transitory records do not set County policy, establish guidelines or procedures, discuss a County business matter, discuss a decision, certify a transaction, or act as evidence of receipt. (Certified or registered mail return receipts that contain important information about the names of the sender/recipient and pertinent dates are not transitory.) Transitory records may be treated as having a reference or administrative value that ends when the employee or official no longer needs the information in the record. Transitory records may be purged when their reference value ends. However, if a record request is received for a transitory record before that transitory record has been purged, that transitory record must be disclosed.

### **3. Draft Records**

Inspection may be required for some uncirculated drafts. Officials and employees should consult with the County Attorney's office about the public record status of a draft document prior to denying inspection of that document. To avoid misunderstandings that can sometimes arise from public circulation of discussion drafts, County staff should consider a watermark or labeling each page of draft documents that County staff circulate to others with "DISCUSSION DRAFT ONLY."

### **4. Protected Records**

Examples of protected records are included in this section. Protected records should not be disclosed, and in some cases must not be disclosed, without the permission of the official custodian or County Attorney's office. Just as employees and officials have a duty to disclose public records, they have a duty to protect

the privacy of protected records. In particular, a social security number must never be released as part of a public record. Make efforts not to include protected information and public information in the same record. Records that contain a mix of public records and protected records must be disclosed, but the protected information must first be removed (if on a separate page) or redacted (if on the same page with public information). (See Section F.2. of this Policy for more information on redaction.) When in doubt as to whether a record is a protected record, employees and officials should consult with the County Attorney's Office.

As outlined in NCGS 132, exempted records (records that are exempted from public records) include but are not limited to:

- a. Confidential communications from the attorney to the client within the scope of the attorney-client relationship (that become public records in three years);
- b. Public enterprise billing information;
- c. Controlled substances reporting system information (which may be released only in accordance with The Controlled Substances Act);
- d. Criminal investigation records and records of criminal intelligence information, (note that certain information pertaining to violations of the law and arrests and indictments, and certain content of '911' calls are public records). Note also that certain information about violations or apparent violations of the law is a public record;
- e. 911 data base information, if required by agreement with the telephone company;
- f. Sensitive public security information, including specific details of public security plans and arrangements, detailed plans and drawings of public buildings and infrastructure facilities, and certain plans to prevent and respond to terrorist activity, and technology security information;
- g. Certain identifying information of minors participating in a park or recreation program, although the zip code of residence is a public record;
- h. Personnel files of employees, which includes any information gathered by the County with respect to an employee are protected, except for the following specific information that NCGS 160A-168 requires to be public information: name; age; date of original employment or appointment; terms of any employment contract, current position title; current salary; date and amount of each increase or decrease in salary; date and type of each promotion, demotion, transfer, suspension, separation, or other change in position; date and general description of the reasons for each promotion; date and type of each dismissal, suspension or demotion for disciplinary reasons; copy of the written notice of final dismissal decision setting forth the specific acts or omissions that are the basis of the dismissal, and the office to which the employee is currently assigned;
- i. "Tax information" pertaining to a taxpayer's income or gross receipts may not be disclosed, except as provided in N.C.G.S. 160A-208.1 which permits disclosure to comply with a law or court order; for review by the Attorney General ("AG") or representative of the AG; and to sort, process or deliver tax information for the County to administer a tax;
- j. Social security numbers and personal "identifying information" is confidential and unlawful to disclose to the public. If a social security number is lawfully collected, it must be segregated on a separate page, or as otherwise appropriate, from the rest of the record, as provided in N.C.G.S. 132-1.10. In addition to social security numbers, "personal identifying information" includes: employer taxpayer identification numbers; drivers' license numbers (except in cases where the number appears on a non-protected law enforcement record), state identification card numbers and passport numbers; checking, savings, credit, and debit account numbers; personal identification code (PIN) numbers used to access financial

- resources; digital signatures; any other numbers or information that can be used to access a person's financial resources; biometric data; fingerprints; and passwords; all as provided by law;
- k. Trade secrets and electronic payment account numbers (see "identifying information" above for protection of account numbers) which are protected by law. (Note that to protect a "trade secret" detailed requirements must be met.); Trade secrets are defined as meaning business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process.
  - l. The seal of an architect, engineer or land surveyor when that seal has been submitted for project approval under Part 5 of Article 19, Chapter 160A (Building Inspections);
  - m. Certain "trial preparation materials" are protected as provided by law. If records are created for or at the request of an attorney for the County when the County is engaged in litigation or litigation is anticipated, these records are likely protected 'trial preparation materials.' The legal office should be consulted if there is a request for such records;
  - n. Names and addresses of complaining witnesses to crimes must be temporarily withheld if release of the information is reasonably likely to pose certain threats to the witness or materially compromise the investigation; &
  - o. Certain economic development incentives are temporarily protected, but the County must make certain prior disclosures to applicants.

#### **D. RESPONSIBILITY FOR RECORDS**

##### **1. Current employees and officials**

The law provides in N.C.G.S. 160A-171 that the County Clerk is the "public official in charge of an office having public records shall be the custodian thereof."

This Policy establishes the following record responsibilities:

- a. Officials and employees are the primary record custodians of all records they create, send and receive. Every primary custodian is responsible for managing, retaining and disclosing their records in accordance with the Schedule.
- b. Each department director is the official custodian of all records created, sent and received in his or her department, including those of departed employees from that department.
- c. County Commissioners shall provide the Clerk and County Attorney all County business records. Once received, the County Clerk shall maintain, retain, and disclose such records upon a records request. County Commissioners remain responsible for, and shall maintain, retain, and disclose all records not provided to the County Clerk in accordance with this Policy.
- d. The secretary to each board is the official custodian of all records created, sent and received by board members. Board and commission members may provide the secretary of their respective board all County business records. Once received, the appropriate secretary shall maintain, retain, and disclose such records upon a records request. Board members remain responsible for, and shall maintain, retain, and disclose all records not provided to the board secretary in accordance with this Policy.
- e. Every official custodian is responsible for assuring that retention and disclosure requirements are met for the records of their department. Official custodians shall establish and maintain management, retention, and disclosure practices for their departments consistent with this Policy and the law. Official custodians shall receive records requests for records of their

- department and assure that the appropriate primary record custodians disclose the records.
- f. Each primary record custodian is responsible for maintaining and managing the public records they create, send and receive according to the Schedule.
  - g. The County employee or official who creates a record is responsible for managing the record according to the Schedule. Other employees and officials who receive copies of this record only need to keep it until its value to them ends. All County employees and officials are responsible for managing records they receive from outside the County unless they designate the management of that record to the primary custodian.
  - h. Generally, employees and officials who are cc'd on correspondence, unless they are the custodian of that main file, probably are not required to keep a copy of the record. However, the sender and bcc recipient of a bcc'd correspondence record are custodians of that record and must ensure that one of them retains it or that the main Official Custodian maintains the complete record in the main file. Also, if a County employee or official is solely copied on a correspondence, he/she is likely the custodian of that record and must manage it properly.
  - i. Use the chart below as a reference guide to determine who is responsible for keeping a particular record that is determined to be non-transitory. Refer to Section E.2., Litigation Hold Requirements, which outlines that employees and officials must keep all records when a lawsuit has been or is anticipated to be filed on a particular matter (even those records the County would not typically keep).

If the record is...	*Keep it	**Do not Keep it
Sent to you from an official/employee of the County		X
Sent to you from someone outside the County (not a County official or employee)	X	
From you	X	
Sent from an official/employee of the County and you are cc'd		X
Sent from someone outside the County (not a County official or employee) and you are cc'd	X	
Sent from an official/employee of the County and you are bcc'd		X
Sent from someone outside the County (not a County official or employee) and you are bcc'd	X	

*\* Or designate a file custodian*

*\*\* After the record's administrative value to you ends*

- j. County employees and officials should not unnecessarily create or maintain multiple copies of any record, regardless of its' medium. For example, if ten (10) photographs are taken for purposes of retaining one or two acceptable photos for business purposes, then the unsatisfactory photos are likely transient records and should be purged. Maintaining duplicates and transient records results in unnecessary expense to the County and creates a burden on the computer network. In the example given, if 10 unnecessary photographs are retained it has the undesired effect of possibly creating 10 new records.
- k. The Technology Solutions Department is responsible for computer system security and

performance, but they are not responsible for managing employee's and official's records. Each employee and official is the primary custodian for their records, and each is responsible for managing County business related records according to the Schedule, regardless of whether they are stored on County-owned or personal equipment.

### **Departing Employee and Official Records**

County business related records of departing employees and officials remain the property of the County. Failure of officials to deliver records to their successor or appropriate County employee is a Class 1 criminal misdemeanor.

#### **a. Departing Employee Records**

The supervisor will advise the departing employee to manage all records (paper, electronic and telephone) according to the Schedule. The supervisor will require the departing employee to review paper and electronic records to ensure file names are logical and meaningful and to ensure records are filed in folder systems to provide for easy retrieval. The supervisor will require the departing employee to copy all records from the employee's computer that are not stored on the County's network and provide this copy to the Department Director prior to the employee's last day of employment. The supervisor will require the departing employee to manage all telephone voice mail messages according to the Schedule. The employee shall delete transient voice mail messages. The employee shall maintain all other voice mail messages (either on the computer or in the paper files) and save them appropriately in folder systems to ensure easy retrieval. Voice mails should not be stored on the telephone, because this method does not ensure easy retrieval.

Technology Solutions archives all electronic email records of County employees. Technology Solutions staff will also confirm with the Department Director that all the departed employee's telephone voice mail messages have been handled according to the Schedule prior to reassigning the telephone. If the departing employee fails to manage their electronic records or telephone voice mail messages according to the Policy and the Schedule prior to departing County employment, then the Department Director is responsible for these duties prior to Technology Solutions reassigning the equipment.

#### **b. Departing County Commissioner Records**

The County Clerk and County Attorney will work with all County Commissioners leaving office to request that they provide all County public records to the County Office.

#### **c. Departing Appointed Official Records**

The Official Records Custodian for a particular Board will work with departing Board members to request that they provide all County public records to the Official Records Custodian.

## **E. RETENTION AND DISPOSITION OF PUBLIC RECORDS**

### **1. General Retention and Disposition Requirements**

The law requires that public records be retained in a manner that allows public inspection and copying, and not destroyed for specific periods of time. Public records should be destroyed after they have been

retained for the correct time period according to the Schedule by utilizing approved destruction methods outlined in the Schedule, unless there is some other reason that record should be retained, such as an outstanding record request, subpoena, court order, or some state or federal law or grant requirement. Additionally, if a claim or litigation is pending or threatened, records pertaining to the claim or litigation must not be destroyed. (See Section E.2. of this Policy for more information on “litigation hold”.) A public record that is not properly purged remains a public record and must be disclosed upon request, upon receipt of a subpoena or court order or if a claim is made or litigation instituted. For example, if the Schedule requires that a County employee maintain a record for two (2) years and, when the record is aged three (3) years, staff receive a record request or a court order that includes this record, then staff must disclose that record. Having a plan for the destruction of records eliminates obsolete records and saves resources by not indefinitely and unnecessarily storing records beyond appropriate retention periods.

Any record that is retained electronically should be maintained in a secure system that controls access, storage, retrieval, alteration, and deletion. Each primary record custodian must set up their own retention and disposition procedures, including appropriate back-up, to assure compliance with the law.

## **2. Litigation Hold Requirements**

A ‘litigation hold’ is notice from the County Attorney’s office that a lawsuit has been or is reasonably anticipated to be filed against the County. When a litigation hold notice is sent, ALL records that may be relevant to the claim or lawsuit must be retained, and not purged until the lawsuit is resolved and the applicable retention period has expired. Transient records (including telephone voice mail messages), duplicate records, electronic versions of printed records and other records for which there is no duty to retain under the Schedule must be retained once a litigation hold is issued. A litigation hold may also result if an official or employee receives a letter or other notice from an attorney for an adverse party that specific records be preserved. The County Attorney’s office should be consulted if such notice is received.

## **F. RECORDS REQUESTS**

### **1. Responding to a Record Request**

The law requires every record custodian to permit the inspection of any public, non-protected record in the custodian's custody at reasonable times and under reasonable supervision, and to furnish copies as promptly as possible after payment of any applicable fee. (See Section F.4. of this Policy for more information on fees that may be charged to produce records in response to a record request.)

Persons requesting to inspect a record cannot be required to disclose their purpose or motive for wanting the record, nor can they be required to give their name or address, or show an ID, or sign for a record. However, employees and officials may require the requesting party to agree in writing that geographical information system databases and data files will not be resold or used for trade or commercial purposes. Also, the County may require computer database requests be in writing.

Persons should make record requests to the County Attorney in writing or by completing the County’s Online Request Form. If a requestor does not have online access, he/she should contact the County Attorney’s Office. The County Attorney will then confirm that the requester has fully and clearly identified the record(s) sought. The County Attorney will then consult with the official custodian who shall forward any record request to the primary custodian. The primary custodian should make or direct

a thorough search for the record and provide one of the following responses within two business days to the County Attorney: (1) inform the requester that more time is needed to respond to the request and provide an estimated timeframe for the response; (2) make the record available for inspection or copying (redacted, if necessary – see Section F.2. of this Policy for more information on redaction), taking necessary precautions to ensure the records are not at risk of being lost, damaged or destroyed; (3) if there is no record, provide a written statement that the County employee “as custodian” have made a search of the records in a staff member’s custody and have found no record (the law does not require record custodians to create a new record or in an alternate format to satisfy a request); or (4) request that the County Attorney review the record request for denial, or portions thereof, provide a written explanation of the basis for the denial.

In some cases, the official custodian may be able to simply forward a copy of the requested record(s) to the requester. In other cases, the official custodian may make the records available for onsite inspection only. Should the requestor ask for copies of specific records or portions therein, may be provided at cost (see Section F.4. for more information on the fees the County may charge).

The County is responsible to provide documents in the format for which they exist. The law does not require record custodians to create a new record or in an alternate format to satisfy a request. The County’s format for public records request is by printing the documents, providing electronically in portable document format (PDF) to prevent alteration of the original document(s), or providing PDF versions on a CD/DVD. The primary custodian should communicate the cost and obtain approval from the requesting party prior to producing any records in response to the record request. The requesting party shall pay any cost prior to employees and officials reproducing records or at the time of receiving the records. If the requesting party does not concur with paying the fees, then the official can make onsite arrangements for the inspection of records without consultation.

Employees and officials must allow the inspection of electronic mail lists containing e-mail addresses of subscribers. However, employees and officials of the County must not provide a copy of these lists in response to a records request in accordance with this policy and NCGS 132.

## **2. Redacting Protected Information**

If a record subject to a record request is a protected record, an employee will not likely have to make that record available for inspection and copying. In some cases, however, a public record will contain information that is protected, but the entire record is not protected. In those cases, the protected information should be redacted in a manner that shows that a deletion was made. For example, if the record is a printed record, make a copy of the record, tape over the protected information with white correction tape, then use a black marker to completely mark over the tape. The marked up record should then be copied and the new redacted copy made available for inspection and copying. If a primary custodian is providing an electronic copy that includes protected information that must be redacted, the custodian should save the electronic document as a new file name, and from the new file, use the electronic “cut” feature to eliminate the protected text and show in the revised document where text has been “cut”. It is the primary custodian’s responsibility to ensure that protected information remains protected.

## **3. Copyrighted Records**

There are records in the County’s custody that may be copyrighted material and protected by copyright

laws. If a record request is made for a record that is protected by copyright, employees and officials should make the record available to the requester for inspection. Employees and officials should not copy records known to be copyrighted in response to a records request. It is possible that County records may contain copyrighted materials for which employees and officials are not aware of the copyright status. If it is possible that records provided by employees and officials may include copyrighted materials, then the employee or official should use the following statement when releasing the records in response to a records request:

*The County is providing copies of records you have requested in accordance with the North Carolina Public Records Law. To the extent any of the records provided are copyrighted, take notice that these records remain subject to copyright law and you are not authorized to reproduce, download or otherwise reproduce or copy any copyrighted material or work that the County has provided in accordance with the public records law. The use, reproduction, downloading or distribution of copyrighted materials and works may subject you to applicable penalties and damages under state and federal laws.*

#### 4. Charging for Producing Records

The law and the County’s fee schedule permits the County to charge a fee for copy of a record that recovers the actual cost of duplicating the record. Specific fees are set forth in the County of Davie County’s Annual Budget Fee Schedule, which can be found on the County’s website ([www.daviecountync.gov](http://www.daviecountync.gov)) or by contacting the County Finance Office. In some cases, providing public records may require extensive use of information technology resources or clerical and/or supervisory assistance. In these cases, the official custodian may assess a reasonable service charge based on the County’s actual incurred costs. This reasonable service charge must be approved by the County Attorney and the County Manager (or designee). In order to maintain budgetary control and to prevent unnecessary expenditure of funds, large volume public records requests shall not be completed until the requestor has paid all fees associated with the request. An estimate of the charges should be given to the requester and approval obtained prior to responding to the request. All fees and charges should be collected before producing the records or at the time the records are delivered. All fees established by this Part shall apply to any person who requests copies of County records, other than persons acting on behalf of the County.

- a. Except as provided otherwise, the following charges shall be made for production:

<i>Ink on copy</i>	<i>Size of paper of copy (inches)</i>	<i>Hardcopy fee per page (includes electronic production costs)</i>
black	8.5 x 11	5 cents
black	8.5 x 14	6
black	11 x 17	10
color	8.5 x 11	10
color	8.5 x 14	15
color	11 x 17	20

The County finds that the amounts listed in this section are the actual costs of producing records in hard copy. Copying will generally be made 2-sided when reasonably practicable. A 2-sided copy shall be charged as two pages. These costs may be updated if and when they change without further approval of the Manager. The per page cost includes the cost of paper (hard copy production only) plus the cost of specialized information technology resources.

- b. County staff shall charge fees for copying larger than standard size originals. The fees shall be in amounts equaling the actual cost.
- c. As authorized by North Carolina General Statute 132-6.2(b) an additional special services charge will be added to burdensome copying. The amount of the fee will equal the dollar value of the personnel costs required for such extensive clerical or supervisory assistance by personnel together with the cost for any excessive use of information technology resources. However, there shall be no additional surcharge for labor involved in reviewing records to determine what records or parts of records shall be provided.

## **5. Disputed Records Requests: Enforcement and Penalties**

The law provides a mediation process for resolving lawsuits regarding public records disputes. Individual employees and officials are not subject to personal liability for attorney fees if they consulted with and followed the advice of an attorney. For this reason, if employees or officials have doubts about the protected status of a record or are considering denying a records request, they should consult the County Attorney's office.

### **G. GENERAL RECOMMENDATIONS:**

County Employees and Officials should:

- a. Make thoughtful decisions about the medium County employees use to convey information. The creation and retention of unnecessary printed and electronic records places burdens on the County's physical and electronic storage systems.
- b. Avoid creating records that are not necessary, and dispose of unnecessary duplicate records and transitory records.
- c. Try not to mix public records with protected and personal records. Treat protected records with a heightened concern for security, and segregate protected records from other records if possible.
- d. Never share protected records with a person who should not have access to those records. In some cases, such as social security numbers, the law requires that the protected record be segregated.
- e. Maintain all County records on County equipment and all personal records on personal equipment.
- f. Appropriately label and store records. Label those records that are protected records or that contain protected records in a manner that clearly indicates their protected status. If a protected record will become a non-protected record at some time in the future, mark it in some way to identify the date it will lose its protected status.
- g. Dispose of transitory records, duplicate records, and records that have exceeded their retention period. Contact the County Attorney's Office with any questions about this Policy.