

CF OPERATING PROCEDURE
NO. 15-9

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, July 1, 2007

Documentation Management

REQUESTS FOR PUBLIC RECORDS

This operating procedure describes the procedures for responding to requests for public records, and for assessing and collecting fees for providing copies of public records.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

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General Counsel

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

Revised paragraph 1-5a to require that an office, upon receipt of a public records request for records not held by that office, forward the request to the office believed to hold the requested records; and added paragraph 1-5b to require that the requestor be notified of the person(s) assigned to respond to the request.

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Chapter 1

RESPONDING TO REQUESTS FOR PUBLIC RECORDS

1-1. Purpose. This chapter provides staff with the procedures for responding to requests for public records.

1-2. Policy for Providing Requested Records.

a. It is the policy of the Department of Children and Families that all employees will comply with Florida's public records law and state retention schedules for public records, including electronic mail (e-mail). Florida's public records law, listed in Chapter 119, Florida Statutes, states: *"The Legislature finds that providing access to public records is a duty of each agency...."*

b. See CFOP 15-12 for the procedures for releasing information pertaining to a report of abuse, neglect, exploitation or abandonment of a child or adult.

1-3. What Is A Public Record.

a. Public records are *"...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other materials, 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."* [Section 119.011(1), Florida Statutes (1995)]

b. The Florida Supreme Court interprets the definition of public records very broadly to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.

(1) Personnel records are open to inspection unless exempted by law. This includes applications, resumes, third-party communications (e.g., references), salary information, grievance records, and travel vouchers. The courts have rejected claims that release constitutes an invasion of the employee's privacy. Those items which are deemed confidential are redacted and the document is released.

(2) There is no "unfinished business" exceptions to public records inspection and copying requirements. Any agency document circulated for review, comment, or information (including memoranda, drafts, or proposals) is a public record regardless of whether it is marked "preliminary" or "working draft". A non-final document need not be communicated to anyone in order to constitute a public record.

(3) Section 119.01 also notes that *"...automation of public records must not erode the right of access to those records."* One Florida court has held that "information stored in a computer is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet." In answering a question as to whether e-mail messages are public records, a recent attorney general's opinion states: *"...the fact that information made or received...in connection with official business is electronically made or received would not appear to alter its character as a public record...."* Therefore, all materials, *regardless of form*, are open for public inspection unless the legislature has specifically exempted them from disclosure.

c. Exemptions To The Public Records Law.

(1) State and federal law exempts certain categories of documents from disclosure under the public records law. These laws must be strictly followed when redacting public records. Only

the exact information specified in the laws can be redacted from the records. If there is a question whether a specific exemption applies to the records, you must seek out legal assistance prior to redacting. Furthermore, if there is a possibility that Federal law requires redaction of the records, you must seek out legal assistance prior to redacting. Most exemptions recognized by Florida law are found in s.119.07, Florida Statutes. Additional exemptions can be found in other Florida statutes. These include, but are not limited to, the following:

- Social security numbers contained in agency records (Florida Statutes, s. 119.071(5))
- Home addresses and telephone numbers, photographs, and family information of certain personnel (including Children and Families investigators) (Florida Statutes, section 119.071(4))
- Employee medical information (Florida Statutes, section 119.071(4))
- Reports of abuse of children, disabled adults, or elderly persons and materials generated as a result of the report (Florida Statutes, sections 39.202 and 415.107)
- Documents prepared for collective bargaining negotiations (Florida Statutes, section 447.307)
- employee Drug test results (Florida Statutes, section 112.0455)
- Employee assistance program records (Florida Statutes, section 110.1091)
- Examination questions and answer sheets for the purpose of licensure, certification, or employment (except an individual may review, but not copy, the individual's own exam questions and answers) (Florida Statutes, section 119.071(1)(a))
- Ridesharing information (Florida Statutes, section 119.071(5)(e))
- Data processing software (under licensing agreement or, if produced by the agency, "sensitive") (Florida Statutes, section 119.071(1)(f))
- Sealed bids or proposals (until notice of a decision or no later than 10 days from opening) (Florida Statutes, section 119.071(1)(b))
- Name and identity of whistle-blower (Florida Statutes, section 112.3188)

(2) Before any document is released pursuant to a public records request, any exempt information must be redacted. The individual/s redacting the documents must keep a log of all of the redacted information. This log should include the page where the redaction is located, a brief description of what was redacted, and the statutory cite relied upon in making the redaction.

1-4. Who May Request A Public Record. Section 119.01(1), Florida Statutes, declares: "[i]t is the policy of this state that all...state records shall be open for personal inspection *by any person*" (emphasis added). Reporters, attorneys, union representatives, public employees, and other citizens all have the same right of access to public records. A person need not give a reason for making a public records request and need not have a "legitimate" reason to access a public record.

1-5. Procedure for Responding to Requests.

a. Requests may be made in writing or orally. All public records requests should be referred to the appropriate supervisor (if there is any question about the validity of the request, contact the district/region/central legal office). If the Supervisor determines that his/her office does not have the requested records but believes the records are located within another office of the Department, the Supervisor must contact that office. If the records are housed there, the Supervisor must transfer the request to that office for handling.

b. The Supervisor that handles the request is responsible for ensuring that district/region/central legal counsel is copied with all public record requests. That Supervisor is also responsible for appointing one or more persons to gather the requested documents and then either arranging a time for inspection of the documents or making copies available to the requester. The person(s) appointed by the Supervisor to assist with the request must inform the requestor that they have been assigned the task. This can be done either orally or in the Department's first written

response to the requester by stating: "My name is _____ and I have been designated the task of assisting you with your public records request."

c. Documents that do not fall within the definition of a public record need not be produced. Records, in whatever form, which are public records must be produced, but the exempt information must first be redacted. If in doubt as to whether a document is a public record or contains exempt information, the Supervisor should contact the district/region/central legal office. For any request that produces documents in excess of 50 pages, a Supervisor can request to have the district/region/central legal office review all of the proposed exemptions. In these situations, the district/region/central legal office will have five working days to complete the review.

d. Requests for copies of a complete file or record should be examined closely in order to minimize costs to the requester. The department unit responding to the request should suggest that the requester review the file or record and select only useful information for photocopying. A requester still wanting photocopies of a complete file or record will be provided copies with fees assessed as provided in paragraph 2-6 of this operating procedure. Requests for "any and all" records should be closely scrutinized by the Supervisor to ensure Department staff are clear regarding what is being requested. If it appears that fulfilling the request will take an excessive amount of time and/or will result in large costs to the requestor, staff can inform the requestor of this in the acknowledgement letter required in paragraph 1-5f of this operating procedure. In doing so, the staff should also inform the requestor that he/she can amend the request in order to cut down on the costs or the time it will take to respond to the request. If there is any question regarding what documents would be included in an "any and all" request, the Supervisor should consult with district/region/central legal staff for direction.

e. The department may charge a requester to duplicate a public record. In addition, if copying the public records requires *extensive* use of information technology resources or clerical and/or supervisory assistance, the department may assess a reasonable service charge based on the department's actual incurred costs. The allowable copying costs are set forth in s.119.07, Florida Statute and detailed in Chapter 2 of this operating procedure. All charges must be collected before the documents are copied and produced.

f. An estimate of the charges must be provided to the requester by letter or e-mail. If more than a week is needed to develop the cost estimate, the requestor must be notified by letter or e-mail acknowledging receipt of the request and explaining that a cost estimate is forthcoming. Otherwise, the letter or e-mail which informs the requestor of the costs can also serve as the letter that acknowledges receipt of the request.

g. Rules or conditions imposed before allowing inspection or providing copies (e.g., an automatic waiting period or an arbitrary time period for inspection) which operate to restrict or circumvent a person's right of access cannot be imposed. The only delay permitted is the reasonable time allowed to retrieve the record, to review the record and redact those portions that are exempt, and to copy the record (if requested).

1-6. Procedure for Photocopying Records Containing Redacted Material. Xerographic copying often produces "bleed through" resulting in the portions sought to have been redacted remaining readable when held up to a light source. To eliminate "bleed through", the records must be copied and the portions of the records being blacked out must be thoroughly blackened out. The blacked out copies are then recopied, whereupon the blacked out portions are not subject to being read even when subjected to background light.

Chapter 2

CHARGES FOR PROVIDING COPIES OF DCF RECORDS OR PUBLICATIONS

2-1. Purpose. This chapter prescribes the procedures for the assessment and collection of fees when providing a copy of a public record to a client or the general public. This operating procedure does not apply to copies of records for which fees have been established or waived by state or federal law or existing negotiated contracts.

2-2. Scope. This chapter applies to all organizational units of the department.

2-3. Reference. Florida Statutes (F.S.), section 119.07(4) (Public Records Law).

2-4. Definitions. For the purposes of this chapter, the following terms are defined:

a. Administrative Publications. Department of Children and Families operating procedures and pamphlets as defined in CFOP 5-2.

b. Special Service Charge. The fee that may be charged, in addition to the actual cost of duplication, if the nature or volume of material requested to be inspected, examined or copied is such as to require extensive use of information technology resources or extensive assistance by department staff, or both. The special service charge must be reasonable, and must be based on the cost incurred by the department for the use of information technology resources and on the labor cost of the department employees providing the assistance. "Information technology resources" shall have the same meaning as in section 282.303(13), F.S.

c. Client. Any person who has applied for or is receiving a service which is funded, in whole or in part, by the department or for which the department has administrative responsibility. This term includes patients and residents of the department's facilities or institutions.

d. Client Record. Any item, collection, or grouping of manual or automated information about an individual client. The terms "client record," "case record" and "client information" are synonymous for the purposes of this operating procedure.

e. Confidential Record. A public record that is exempt from the provisions of section 119.07(1), F.S. and which is not open for public inspection or copying except in those instances as specified by applicable law. Copies of confidential records will be provided only to those individuals or agencies as specified by law.

f. Public Records. All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material (regardless of physical form, characteristics, or means of transmission) made or received pursuant to law or ordinance or in connection with the transaction of the department's official business. See paragraph 1-3 of this operating procedure. For the purposes of this chapter, the terms "administrative publication" and "client record" have been defined separately.

2-5. Availability of Records. Public records will be available for inspection or copying during regular business hours under reasonable conditions.

2-6. Fees for Providing Copies.

a. When providing a copy of a public record to a client or the general public, the fee which may be charged is the fee prescribed by law or, if not prescribed by law, the fee is:

(1) 15 cents per one-sided copy for photocopies no larger than 14 inches by 8 1/2 inches. An extra 5 cents per copy can be charged for two-sided copies. A charge of up to \$1.00 per page may be assessed for a certified copy of a public record.

(2) The actual cost of duplicating the requested material for copies larger than 14 inches by 8 1/2 inches, or the actual cost of duplicating the requested material for copies (regardless of size) which are duplicated by some means other than photocopying.

b. The cost of mailing or shipping the requested material may also be added to the fee for duplicating the requested material, if the requester asks that the material be delivered (instead of the requester, or representative, picking up the material in person).

c. The "actual cost of duplicating" means the cost of the goods and supplies used to duplicate the requested material, but does not include the labor cost or overhead cost associated with such duplication.

d. A special service charge (if applicable pursuant to section 119.07(4)(d), F.S.) may be added to the fee for duplicating the requested material if the nature or volume of the public records being requested requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both. Upon request, the office assessing the special service charge will provide documentation supporting the assessment of the charge.

e. No sales tax may be added to the cost of providing requested material.

f. Unless prescribed by law, no fee may be charged if the cost of providing the material is less than \$3.00, including mailing or shipping costs and special service charge (if applicable).

g. Copies Provided Without Charge. Unless prescribed by law, no fee may be charged for providing copies as follows:

(1) Administrative Publications.

(a) City, county, state or federal government agencies and elected or appointed government officials will be provided free as many copies as required.

(b) Providers under contract to the department to provide services to clients will be provided free of charge one complete copy of any administrative publication(s) addressing those services or addressing the providers' contractual obligations.

(2) Client Records. Copies of confidential records will be provided only to those individuals or agencies as specified by law.

(a) City, county, state or federal government agencies and elected or appointed government officials, as specified by law, will be provided one complete free copy.

(b) A client or the client's attorney or representative, as specified by law, will be provided, upon request and at no charge, one copy of the client's "admission summary" and "discharge summary" for the client's current admission/commitment (or most recent admission/commitment, if not

currently admitted/committed). Additional information from the clinical record or additional copies of the "admission summary" or "discharge summary" will be provided after payment of the proscribed fee.

(3) All Other Public Records. City, county, state or federal government agencies and elected or appointed government officials will be provided one complete free copy.

h. Media Other Than Hardcopy. Media other than hardcopy may consist of microfilm, microfiche, photographs, slides, films, tapes, videotapes, blueprints, and architectural drawings. The fee which may be assessed for providing media other than hardcopy will be based upon the actual cost to the department for producing the media. (If applicable, a special service charge may be added.)

i. Computer Generated Information. The fee for providing information which is already contained in a computer generated report will be based upon the actual cost to the department for providing the report. The fee for providing information which requires the use of the computer to generate the requested information will be based upon:

(1) The labor cost of the employees who write programs and operate the computer and its peripheral equipment to generate the requested information.

(2) The fee schedule developed by the cost allocation unit within the office of information systems. The fee schedule, which is updated periodically, may be obtained by contacting the office of information systems.

(3) The fee schedule by which the department is charged for using other agencies' or organizations' computer systems.

2-7. Payment of Fees. Fees are payable by cashier's check, money order, or personal check and must be collected prior to copying and producing the requested material. Checks and money orders must be made payable to the Department of Children and Families.

2-8. Processing Collected Fees. Fees received will be sent by the office receiving the payment to the appropriate district/region or central office financial services office. Prior to forwarding the payment, the sending office will contact the financial services office for instructions for forwarding the payment. Upon receipt, the payment will be deposited by the financial services office into the appropriate miscellaneous income account. For detailed instructions on this procedure, refer to appropriate sections of the accounting procedures manual.

2-9. Appeals. Appeals will be handled in accordance with the Administrative Procedures Act, Chapter 120, F.S.