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**RESOLUTION NO. 2020-75**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ADOPTING AN AMENDED PUBLIC RECORD REQUEST POLICY; RESCINDING RESOLUTION 2017-20; AND PROVIDING AN EFFECTIVE DATE.**  
*(Sponsored by Village Attorney John C. Dellagloria, Esq., and Co-Sponsored by Administration)*

**WHEREAS**, the Village adopted Resolution 2017-20 which initially established a Public Records Policy to comply with all requirements of Chapter 119, Florida Statutes; and

**WHEREAS**, to update the present procedures, the Council wishes to adopt the Public Records Policy attached as Exhibit "A"

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE OF PALMETTO BAY, FLORIDA, THAT:**

**Section 1.** The Mayor and Village Council hereby adopt the Public Record Request Policy attached as Exhibit "A" to this Resolution.

**Section 2.** Resolution 2017-20 is repealed in its entirety.

**Section 3.** This Resolution shall take effect immediately upon its adoption.

**PASSED and ADOPTED** this 27<sup>th</sup> day of July 2020.

Attest:

DocuSigned by:  
*Missy Arocha*  
Missy Arocha  
Village Clerk

DocuSigned by:  
*Karyn Cunningham*  
Karyn Cunningham  
Mayor

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:**

DocuSigned by:  
*John C. Dellagloria, Esq.*  
John C. Dellagloria, Esq.  
Village Attorney

1	<b>FINAL VOTE AT ADOPTION:</b>	
2		
3	Council Member Patrick Fiore	<u>YES</u>
4		
5	Council Member David Singer	<u>YES</u>
6		
7	Council Member Marsha Matson	<u>YES</u>
8		
9	Vice-Mayor John DuBois	<u>ABSENT</u>
10		
11	Mayor Karyn Cunningham	<u>YES</u>



## **VILLAGE OF PALMETTO BAY PUBLIC RECORD REQUEST POLICY**

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## I. INTRODUCTION

Our Village Charter's Citizen's Bill of Rights provides that, "All audits, reports, minutes, documents and other public records of the Village and its boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public." The Florida Constitution, Article I, also provides a right for the public to inspect non-exempt public records and Chapter 119 of the Florida Statutes defines how government entities handle public records. This policy defines the responsibilities of Village officials, employees, volunteers, and board members as related to public records.

## II. REGULATORY MANDATES

1. Chapter 257, Florida Statutes, vests in the Division of Library and Information Services the authority to oversee the records management functions of state and local government agencies. Specifically, Section 257.36(5) requires the Village to:
  - a. Cooperate with the division in complying with the provisions of the chapter, designate the Records Management Liaison Officer (RMLO) for the Village, and the Village is required to submit the approved form or a letter to the Division of Library and Information Services notifying the division as to the Village's RMLO.
  - b. Establish and maintain an active and continuing program for the economical and efficient management of records.
2. Chapter 119, the Public Records Law: Chapter 119 has specific provisions related to public records law, including the definition of public record, access, and exemptions. This law applies to all municipal officers of the Village of Palmetto Bay, both elected and appointed, all Village departments, citizen advisory boards, committees, and other units of the Village government.
  - a. A public record as defined in Section 119.011(12), F.S., are all documents, papers, letters, maps, books, 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 ordinance or in connection with the transaction of official business by any agency.
  - b. The Florida Supreme Court further defined public records in, among many other cases, *Shevin v. Byron, Harless, Schaffer, Reid, and Associates*, 379 So. 2d 633 (Fla. 1980), where the Court ruled that a public record is any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type. Therefore, any document meeting the above criteria set forth by the Court is a public record regardless of whether it is in final form or is designated by the agency as a "draft," "working copy," or "preliminary version." If an agency has circulated a "draft" for review, comment, or informational purposes, that draft is a public record.

As clarification, the Court further ruled that "[t]o be contrasted with 'public records' are materials prepared as drafts or notes, which constitute mere precursors of governmental 'records' and are not, in themselves, intended as final evidence of the knowledge to be recorded. Matters which obviously would not be public records are rough drafts, notes to be used in preparing some other documentary material, and tapes or notes taken by a secretary as dictation. Inter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely pre-

pared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business".

3. If an employee has a question as to whether a public record is exempt from production, the Village Attorney shall advise the employee as to whether the record should be produced.

### III. DEFINITIONS

1. Actual cost of duplication: the cost of the material and supplies that are used to duplicate the record; not inclusive of any lawfully permitted labor or overhead costs associated with such duplication.
2. Attorney: refers to the Village Attorney.
3. Clerk: refers to the Village Clerk.
4. Confidential: public records that have been identified in the Florida Statutes as confidential and which therefore contain information that is not subject to inspection by the public and may only be released to the persons and entities designated in the statute.
5. Exempt: public records that have been identified in Chapter 119 or other applicable Florida Statutes as exempt from public inspection and disclosure.
6. Extensive: shall mean two (2) hours or more as related to the use of information technology resources or requiring clerical and/or supervisory assistance associated with a public records request.
7. Manager: refers to the Village Manager.
8. Public Records: as defined in Section 119.011(1) : "all documents, papers, letters, maps, books, 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 ordinance or in connection with the transaction of official business by any agency."
9. Reasonable Time: with reference to public records is during normal working hours – Monday through Friday, 8:30 am to 5 pm (excluding holidays.)
10. Records Custodian: refers to the Village Clerk.
11. Records Management Liaison Officer (RMLO): refers to the Village's Records Management Liaison Officer designated in writing to the Florida Department of State to coordinate the Village's Records Program. The Village's RMLO is the Village Clerk.

### IV. PURPOSE & APPLICABILITY

1. The purpose of this policy is to:

- a. provide information to the general public concerning the application of Florida Public Records Law and Village policies related to the access of public records; and,
  - b. provide Village of Palmetto Bay employees, officials, volunteers and board members with the information and procedures necessary to understand and carry out their responsibilities under the Florida Public Records Law and the Village of Palmetto Bay rules concerning the manner in which public records requests are to be processed to ensure that responses to the requests are timely, organized, inclusive, and compliant with applicable statutes, rules and regulations.
2. The policy applies to members of the Village Council, Charter Officers and all employees of the Village of Palmetto Bay. Application of the policy also extends to independent contractors, Village consultants and advisory boards that have been delegated the authority to perform some governmental function subject to the requirements of Chapter 119. This policy also applies to all existing records, regardless of physical form, characteristics, or means of transmission, created or received by the Village in connection with the transaction of official business.

## V. POLICY

1. It is the policy of the Village to ensure that public records in its custody are maintained and managed as required by the Florida Public Records Law, which provides that all materials made or received by Florida's state and local government agencies in connection with their official business are public records, and furthermore, as required by Chapter 257.36(5), Florida Statutes, which directs each public agency to establish an active and continuing records management program.
2. It is also the policy of the Village to ensure that all public records in its custody that are not exempt or confidential are open for inspection and copying by any person, for any reason, at any reasonable time, under reasonable conditions, absent any statutory exemption to the contrary.
3. Requested public records may not be withheld for any reason, except if the record or portion thereof is legally designated as confidential or exempt from public disclosure.
4. At all times the Clerk shall provide safeguards to protect the contents of Public Records from alteration and to prevent disclosure or modification of those portions of Public Records that are exempt or confidential.
5. The Clerk shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law.
6. Public records shall only be inspected in person under the supervision of the Clerk.
7. In accordance with the Public Records Law, this policy only applies to existing documents; a record is not to be created. Additionally, Florida Law does **not** require agencies to "explain" records or answer questions based upon the records' content, other than providing information on how to obtain the record or about record production costs, as applicable.

8. Unless otherwise required by law, the Village may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access, in accordance with the following provisions of the Public Records Law:
  - a. Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the Village.
  - b. This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the Village where a copy of the microfilm may be made available by the Clerk.
  - c. Photographing public records shall be done under the supervision of the Clerk, who may adopt and enforce reasonable rules governing the photographing of such records.
  - d. Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the Clerk, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the Clerk as the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record.
9. 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 Village involved, or both, the Village 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 Clerk shall collect fifty percent (50%) of the estimated service charge in advance. The service charge shall be calculated using the hourly wage of the employee(s) performing the service. Following performing the service, if a refund is due to the requestor, the Clerk will coordinate the refund through the Cashier's office. The Clerk or record coordinator shall collect the remaining balance due prior to delivery of the Public Record. If an individual has not paid the fee associated with a public records request, subsequent requests shall not be provided until such time as the amounts due have been paid.
10. Pursuant to Florida law, requestors are not required to put their requests in writing or to explain the reason for the request. However, requestors are encouraged to complete a Public Records Request form to assist staff in clarifying the exact scope of the request. Should an individual not wish to put their request in writing, staff shall ask for clarification and complete the Public Records Request Form on their behalf. Requestors should specify whether they wish to inspect the record(s), obtain hardcopies, receive the documents via email, or request electronic documents on CD/DVD. When so requested, electronic records will be provided to the extent that they exist in electronic format.
11. The Village contracts out its policing services through the Miami-Dade County Police Department and therefore all law enforcement records are maintained by county police. All requests for law enforcement records, including personnel records, shall be made to the Miami-Dade Police Department Central Records Bureau. The Central Records Bureau is located within the Fred Taylor Building at the Miami-Dade Police Department Headquarters complex, located at 9105 NW 25<sup>th</sup> Street, Doral, Florida (Telephone: 305-471-3220).

## VII. Procedure

The following procedure is based entirely on the provisions contained in Resolution No. 2020-\_\_:

### 1. Responsibilities of Village Officials:

- (i) The Village Clerk is designated as the public records officer and custodian of records of the Village. The Clerk shall maintain a log or register of all public record requests, whether written or oral, including the date and time the request is received. The Clerk shall copy the Village Attorney and Village Manager on all public records requests received.
- (ii) The Village Attorney is responsible for providing a response to the Clerk, so that the Clerk may provide a response to the requester.
- (iii) If the public records are kept in more than one form, the requester shall advise as to the form that is preferred.
- (iv) Except as provided herein, all public records requests shall receive an appropriate response within five (5) business days of the request, excluding federal or state government holidays. If the request cannot, in good faith, be completed within five (5) business days, the requestor shall be notified in writing and be advised as to the amount of time still needed to fulfill the request.

## VII. PUBLIC RECORD FEE SCHEDULE

### 1. In accordance with the Florida Statutes, the following fees are authorized:

- a) Up to 15 cents per one-sided copy of not more than 14 inches by 8 ½ inches;
- b) No more than an additional 5 cents for each two-sided copy;
- c) For all other copies, the actual cost of duplication of the public record;
- d) The charge for copies of county maps or aerial photographs supplied by the county may also include a reasonable charge for the labor and overhead associated with their duplication, but only if the County charged the Village for these records.
- e) \$1 per copy for a certified copy of a public record.

### 2. Additionally, the Village charges the following:

- a) \$3.00 for each CD/DVD requested.
- b) Extensive Records Request charged at hourly wage of the employee performing the service for any request requiring more than two (2) hours of research.
- c) Electronic copy sent by e-mail: free of charge.
- d) Large scale building department plans fees are calculated by dividing the size of the plans by the number of sheets included and charging \$.15 per each sheet.
- e) Photographs: Where the provision of another room or place is necessary to photograph public records, the Clerk shall charge the requester making the photographs for the supervision services at the hourly rate of the employee supervising the photographing of the record. In accordance with the Public Records Law, such rate is to be agreed upon by the person desiring to make the photographs and the Clerk. If they fail to agree to the cost, the fee shall be determined by the Clerk.