

**Agenda Item Details**

Meeting	Mar 21, 2018 - City Commission Meeting & Summary
Category	13. POLICY FORMATION AND DIRECTION
Subject	13.06 Public Records Policy Amendments -- James O. Cooke, IV, City Treasurer-Clerk
Access	Public
Type	Action
Recommended Action	Approve Option 1.

Public Content

For more information, please contact Matt Lutz, Records Administrator at (850) 891-8130.

Statement of Issue

City Commission policies include the Public Records Policy (No. 140) and the Records Retention Policy (No. 146). The last revision to these policies was in 2007. The recommended action is to: 1) combine these two interrelated policies into a single policy; 2) revise public records policies to specifically address text messaging and other forms of electronic communication; 3) ensure that revisions meet the requirements of the recent settlement agreement with Federated Publications, Inc. concerning a public records lawsuit filed on November 29, 2017.

History/Facts & Issues

In October 1990, the City Commission adopted its first public records policy. In the intervening years, the policy has undergone only two revisions, the last being in 2007. However, since the 1990s, a wide variety of new technologies have emerged that have greatly changed how the world communicates. The birth of the internet and widespread use of cellular phones has revolutionized how the workforce communicates. Adoption and use of these technologies requires the City to update its policies to ensure that it effectively and efficiently retain the public records generated from these methods of communication.

A 2017 lawsuit alleged that the City and its former city manager failed to preserve and retain communications sent and received during a September 2016 conversation that occurred via text-message. Under the settlement, the city admitted to a violation of the public records law. As a remedial action, the city agreed to institute and enforce additional policies concerning retention of public records, particularly as to electronic records in the form of text messages. The amended Policy No. 140 now includes provisions stating that:

- Transmission of any public record via text message over private cellular phone is prohibited (unless the communication is captured and retained by City system, e.g., transmission to City-owned cellular phone and transmission captured by Smarsh or equivalent).
- Transmission of any public record via email over private email server (e.g., @gmail.com, @yahoo.com) is prohibited.

- Transmission of any public record via electronic means (e.g., instant messaging or personal messaging such as Facebook or Twitter, etc.), where communication is not captured and retained by City, is prohibited.
- All text messages transmitted or received over City-provided cellular phones will be captured and retained system-wide (Smarsh system or equivalent).
- Any public record transmitted, sent or received via text message or email shall be retained in City system.
- Violation of the public records law, or city policies concerning public records, shall be grounds for disciplinary action. Repeated violations or flagrant abuses shall be grounds for termination.
- The city critical policies shall contain a notice concerning the duty to preserve and retain public records.
- City leadership team (appointed officials, city management and department heads) and elected officials will file an annual statement confirming compliance with the public records law and city public records policies.
- No charge for up to 100 pages of public records produced by the Treasurer-Clerk and no charge for staff time which does not exceed two hours.
- The Treasurer-Clerk will provide and staff a public records complaint and inquiry telephone hotline as well as respond to public records inquiries and complaints submitted by email.

In addition to the foregoing, the revised policy reaffirms other longstanding requirements such as use of the centralized document management system to store the City's long-term records and permanent records. The amended policy also includes many provisions that are essentially a restatement of Florida statute and/or case law. This was done in attempt to aid the City Commission, staff, and the public by creating a more detailed, comprehensive policy which addresses many of the questions that frequently arise.

New to the policy are measures to provide governance on other records related matters, such as addressing the mechanics to better manage the retention of email messages, a structured process for identifying those entitled to an exemption of their personal information, and ensuring city records are safely stored within city premises.

Given the varied and significant changes to the public records policy, including the merger with the records retention policy, the proposed policy is attached in a "clean" format rather than in "strike/add" format. Existing policies 14 and 146 are also attached for comparison purposes.

Recommended Option:

Approve Option 1: Approve updates to City Commission Policy 140 and entitle the new policy "Public Records, Record Retention, & Disposition Policy" and repeal City Commission Policy No. 146 (Records Retention).

Option:

Option 1: Approve updates to City Commission Policy 140 and entitle the new policy "Public Records, Record Retention, & Disposition Policy" and repeal City Commission Policy No. 146 (Records Retention).

Option 2: Provide other direction to staff

Attachments:

- 1 – Settlement Agreement
- 2 – Copy of the previous Policy No. 140 (Public Records) & 146 (Record Retention)
- 3 - Copy of proposed Policy No. 140