

RESOLUTION NO. 2023-37

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, FLORIDA, AMENDING AND RESTATING THE CITY'S PUBLIC RECORDS POLICY WHICH WAS LAST AMENDED BY RESOLUTION 2013-07; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Springs previously adopted Resolution 2007-25 establishing an amended "Public Records Policy of the City of Winter Springs, Florida" ("the Policy"); and

WHEREAS, the City Commission of the City of Winter Springs subsequently adopted Resolution 2013-07, further amending the Public Records Policy of the City of Winter Springs, Florida; and

WHEREAS, the City desires to further update the Policy in order to provide more detailed procedures for processing public records requests; and

WHEREAS, the City Commission deems it is in the best interests of public health, safety, and welfare of the citizens of Winter Springs to adopt a revised public records Policy in order to provide the public with access to public records while at the same time safeguarding records and insuring the orderly function of the City of Winter Springs, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS, SEMINOLE COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are deemed true and correct and are hereby fully incorporated herein by this reference.

Section 2. Amended and Restated Public Records Policy. The City Commission of the City of Winter Springs hereby amends and restates the City's Public Records which was last amended by Resolution No. 2013-07 as follows:

PUBLIC RECORDS POLICY OF THE CITY OF WINTER SPRINGS, FLORIDA.

A) SHORT TITLE This resolution and any amendments or modifications thereto shall be known and cited as "the Public Records Policy of the City of Winter Springs, Florida."

B) APPLICATION This policy shall uniformly apply to all requests for public records made to the City and its departments, personnel and officials.

C) PURPOSE The purpose of this Policy is to comply with the public records law of the State of Florida and to set forth policy and procedures for providing public accessibility to public records while at the same time safeguarding the public records from alteration, damage, theft, or destruction.

D) POLICY It is the policy of the City of Winter Springs that all public records, except those made exempt or confidential by law, shall at all times be open for inspection, examination, or copying by any person in accordance with Chapter 119, Florida Statutes, and the public records policy of the City of Winter Springs. The City will endeavor to produce all public records requested regardless of the number of documents involved or possible inconvenience to the City. A request for public records may be made verbally or in writing.

E) DEFINITIONS The following words used herein shall have the meaning ascribed below:

1. "Actual Cost of Duplication" means the cost of the material and supplies used to duplicate the public record, but does not include the clerical or supervisory assistance (labor) or overhead cost associated with such duplication.

2. "Custodian" means any person who has supervision and control over a public record or legal responsibility for its care, keeping or guardianship including, but not limited to, the City Clerk and the department custodian required herein. Each official and employee is the custodian of his or her own public records including any public records created or existing on the official's or employee's personal mobile device or other personal property, such as a computer.

3. "Clerical or supervisory assistance" (aka "labor") includes the labor required for determining what City employee, official or contractor possess the requested records, if any; locating and retrieving the records; assessing whether any public record exemption or confidentiality provisions apply; redacting those portions of the records believed to be exempt or confidential; preparing and scanning/copying the records, if necessary; notifying the requestor; refiling the records; and making non-exempt or confidential records available for inspection and copying.

4. "Information technology resources" means any equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly connect, receive, assess, transmit, display, store, retrieve, record, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, or communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

5. "Person" or "Individual" means a human being, corporation, company, government agency, association, trust, contractor, business, or any other legal entity.

6. "Public Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other materials, regardless of

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 the City of Winter Springs. The term “public record” is not limited to traditional written documents. The term “public records” does not include personal records of City officials, employees, and contractors unrelated to the transaction of official business of the City of Winter Springs and thus, personal records do not fall within the aforementioned definition of “public record.”

7. “Special Service Charge” means a fee which may be required for processing a public records requests which requires more than thirty (30) minutes of staff time to complete in accordance with this Policy. The special service charge may account for the cost of clerical or supervisory assistance and the cost of extensive information technology resources utilized to complete the request. The special service charge is separate and distinct from the actual cost of duplication and materials fee, and is more specifically described in Section K) 2. of this Policy.

F) GENERAL GUIDELINES

1. All Custodians shall permit the inspection and examination of public records by any person at any reasonable time, under reasonable conditions, and under supervision of the Custodian of the public record or the Custodian’s designee, except for those exemptions provided by law. The identity of the Custodian’s designee shall be disclosed to the person requesting to inspect or copy public records. All Custodians or their designees shall acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees whether such a record exists and, if so, the location at which the record can be inspected.

(a) **Acknowledgment of Request.** Upon receipt of a public records request, the Custodian shall provide a written response to the requestor acknowledging receipt of the request, including the date and time such request was received. The acknowledgment of receipt shall indicate that the Custodian, or designee, will review the request and provide the responsive documents as soon as reasonably possible. The acknowledgment of receipt shall inform the requestor that an estimate of costs will be forwarded to the requestor before processing if any fees are to be charged related to the fulfillment of the request.

(b) **Reasonable Time.** An automatic delay in producing public records shall not be imposed before allowing access to public records. However, the Custodian shall be allowed a reasonable time to: (i) determine whether requested records exist; (ii) locate records; (iii) retrieve the public records; (iv) review each record to determine whether to assert a public record, or portion thereof, is confidential or exempt from production; (v) redact a public record if necessary; and (vi) scan/copy the public records. If satisfying the request immediately would unduly interfere with conducting official City business or the operation of the department, however, the Custodian will arrange, if feasible and to the extent agreeable with the requestor, a mutually satisfactory time for fulfilling the request. If a mutually acceptable time is not agreeable, the Custodian shall fulfill the request as soon as possible in accordance with this Policy. This will vary according to the circumstances of the request for public records including, but not limited to, the number of records requested and reviewed, the time it takes to determine whether the requested records exist, the

number of years of public records requested and reviewed, the department's filing system, storage of records, timely receipt of a deposit for estimated time expended to handle the public records request, copy charges and actual cost of duplication, and any other factor affecting the location, retrieval and scanning/copying of public records.

(c) **Cost Estimate and Payment of Deposit.** Where, due to the nature or volume of requested records to be inspected or copied, more than thirty (30) minutes of City labor will be expended to comply with the request, the City will provide an itemized estimate to the requestor before pursuing the request. The estimate will include the estimated hours required to complete the request, the estimated special service charge for clerical and supervisory labor and information technology resources, and actual duplication or other material costs. Processing of the records request will not begin until payment of a deposit consisting of 50% of the estimated cost of completing the request is received by the City. Payment is to be made and payable to the City of Winter Springs, 1126 E. State Road 434, Winter Springs, Florida 32708, Attn: City Clerk.

(d) **Reasonable Conditions.** The Custodian shall neither prohibit the inspection and copying of public records nor create burdensome constraints designed to preclude such inspection and copying. Notwithstanding, the Custodian shall, as circumstances dictate, take appropriate and reasonable steps that would permit the Custodian to protect public records from alteration, damage, theft or destruction.

2. Custodians should be familiar with the following requirements of the Florida Public Records law when a public records request is made to inspect or copy a record and the Custodian should advise the public of the same when appropriate:

(a) Individuals are not required to identify themselves or make the request in person, in writing or any other particular format, nor give a reason for such request;

(b) Individuals may not be denied access to public records due to the lack of specifics of the record they wish to inspect or copy;

(c) Public records on computers, personal mobile devices, or other communication devices are governed by the same rule as written documents and other public records. Information stored on a computer, personal mobile device, or other communication devices are as much a public record as a written page or a tabulation in a file stored in a file cabinet.

(d) Custodians are not required to verbally give out information contained in a public record or required to provide analysis or answer questions regarding the records produced. Custodians also are not required to create a public record that does not exist. The Custodian's obligation is to provide access to, or copies of, the public records being requested.

(e) Custodians are not required to produce records in a particular form or format as demanded by the requestor, nor tailored to the requestor's specific needs. If a particular form or format of a public record does not exist because it is not ordinarily created, filed, produced,

maintained, or used in that form by the City, a Custodian is not required, upon request, to create that public record in such form or format.

(f) If any attorney requests to inspect or copy public records regarding a pending lawsuit, proceeding, claim or dispute with the City, the opposing attorney should be coordinating the public records requests through the City Attorney under applicable Florida Bar Rules. Therefore, the City Attorney shall be promptly contacted and advised of the request if the attorney submitted the request directly to City staff. The City Attorney will help coordinate the City's response to the request to the extent deemed necessary by the City Attorney. In situations involving potential or actual litigation, administrative proceedings, or any form of actual dispute involving the City or its officials or employees, the City Attorney's office shall be notified and at the discretion of the City Attorney, either act as a liaison and/or provide guidance to the Custodian for purposes of coordinating the public records production, examination, or inspection with the opposing counsel or the adverse party and the Custodian.

(g) A special service charge or fee may not be imposed for the mere inspection and examination of public records by the general public unless the nature or volume of the public records to be inspected is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance to determine whether public records exist, locate records, retrieve the public records and review each record to determine whether to assert a public record, or portion thereof, is confidential or exempt from production and scan/copy the public records. As set forth in this public records policy, a special service charge or fee shall be required when extensive use of information technology resources or extensive clerical or supervisory assistance is required to determine whether public records exist, locate records, retrieve the public records and review each record to determine whether to assert a public record, or portion thereof, is confidential or exempt from production, and scan/copy the public records. A special service charge shall not be imposed when completing a public records request takes less than thirty (30) minutes of the City's time.

(h) Custodians should advise those individuals requesting copies of public records that may be copyrighted that copying and utilizing such records may be subject to federal copyright laws and penalties.

(i) Based on the particular circumstances and the definition of "public record," City officials and employees who post comments and emails relating to the transaction of City business on privately owned and operated website may be responsible for ensuring that the information is maintained in accordance with the Public Records Law.

3. If a public records request is insufficient to identify the records sought, the Custodian shall promptly notify the requestor that more information is needed in order to produce the records.

4. If any requesting party fails to respond to inquiries for clarification, cost estimates, or any other communication from the City for thirty (30) business days, the request will be closed. A non-responsive request may be resubmitted and will be processed as a new request.

G) DESIGNATED CUSTODIANS

1. Each official and employee is the Custodian of his or her own public records, including but not limited to, any public records created or existing on his or her computer, personal mobile device, and any other communication device. As such, each official and employee is responsible for maintaining his or her own public records and complying with the Public Records laws. To that extent, each official and employee shall have full authority to manage and coordinate the inspection and/or copying of public records requested consistent with this Policy. If the official or employee is not available or is no longer employed by the City, the department director shall be responsible for ensuring that the request to inspect and/or copy public records is handled in a timely fashion.

2. The City Clerk is hereby designated the Custodian of public records generated and received by the Mayor and City Commission as a governing body, and insofar as practicable, the Custodian of vital, permanent, or archival records of the City and records generated and received by the Mayor and City Commissioners in their respective official capacities. The City Clerk shall also assist in coordinating city-wide public records that are either made directly through the City Clerk's office or as directed by the City Manager.

3. The City Manager and each department director of the City shall be responsible for appropriate handling of all public records requested from their respective office or departments and the City Manager and each director may designate an assistant within their office or department for purposes of implementing this Policy.

H) PROCEDURE

1. All requests to inspect, produce and copy public records shall be managed and handled by the Custodian in accordance with this public records policy.

2. The City Clerk shall create and maintain a public records log for noting requests made for public records, the date and time of the request, the information requested, the date and time the request was completed, fees and special service charges (if any), and any other information deemed pertinent by the Clerk to efficiently manage public records requests. Public records requests received by Custodians other than the City Clerk shall forward the public records request to the Clerk for inclusion in the public records log.

3. Where public records requests take over thirty (30) minutes to complete, the Custodian and any other City officers or personnel tasked with retrieving and reviewing responsive documents pursuant to a public records request shall keep a written log of all time spent performing work associated with responding to such request, so that the special service charge can be calculated and documented.

4. Should the City Clerk receive a city-wide request for public records either directly or at the direction of the City Manager, if said records are not on file with or readily available to the City Clerk, the City Clerk shall forward said request to the affected department, official, contactor

or employee and the department's Custodian, official, employee or contractor shall be responsible for retrieving and/or scanning/copying the public records and forwarding them to the City Clerk in accordance with this public records policy.

5. To the extent feasible and in order to avoid disrupting the day-to-day operations of City business, the City Manager shall establish a designated area or areas at City Hall and the Police Department, for the purpose of safeguarding public records from alteration, damage, theft, or destruction and allowing the general public the opportunity to inspect public records.

6. Should any person making a request for public records from any department, official, contractor or employee of the City feel that the department, official, contractor or employee has restricted or circumvented their right to inspect and/or copy public records, said person shall make their request to the City Manager for resolution.

7. The Mayor/City Commission, City Manager, and City Attorney will be advised immediately of any formal citizen or news media complaints and lawsuits filed against the City regarding access to public records.

D) EXEMPT AND CONFIDENTIAL RECORDS

1. Florida law provides that some public records are confidential and/or exempt from public records disclosure. It is the policy of the City of Winter Springs that exempt and confidential public records shall not be disclosed to the public in accordance with the requirements of law. All Custodians shall take reasonable steps to ensure that exempt and confidential records are not improperly released to the public.

2. The City of Winter Springs "Request for Confidentiality" form shall be made available to individuals seeking to make confidential those public records of the City which contain certain personal identifying information which is exempt from disclosure pursuant to Chapter 119, Florida Statutes. City employees shall complete said "Request for Confidentiality" form annually to assist the City in meeting its statutory obligation to keep the personal identifying information of its employees confidential and exempt from disclosure where provided by law. Completed "Request for Confidentiality" forms shall be notarized and submitted to the Office of the City Clerk for processing.

3. Any Custodian who has a question regarding whether a certain public record, or portion thereof, is exempt or confidential should address the matter with their department director. If the department director cannot determine whether the public record is exempt or confidential, the City Clerk should be contacted to address the matter. If the City Clerk cannot make such a determination, the City Attorney shall be contacted to determine whether a public record should be declared by the City to be exempt from public records disclosure or confidential. A record referred to the City Attorney for review shall not be made public until the City Attorney has made a final determination of the legal questions presented. The City Attorney shall review all public records requests which present a legal question as to whether a record contains information which is confidential or exempt.

4. If the Custodian asserts that a record, or part of a record, is exempt or confidential from public records disclosure, the Custodian shall deny the public records request and state to the requestor the basis of the exemption which the Custodian believes is applicable to the record, including the statutory citation to the exemption. Additionally, upon request by the requestor, the Custodian shall state in writing and with particularity the reasons for asserting the exemption and denying the public records request.

5. If the Custodian asserts that only a portion of a record is exempt or confidential, the Custodian shall delete or redact the exempt or confidential portion of the record and produce the remainder of the record which is not exempt or confidential. A Custodian may comply with this subsection by using any reasonable method which maintains and does not destroy the exempted portion while allowing public inspection of the nonexempt portion.

6. Any public record related to a federal agency which contains information that is suspected of being confidential, and said record is deemed public and open for inspection and copying by Florida law, should be examined to determine whether a federal statute (i.e. The Freedom of Information Act, U.S.C. Section 552) requires the particular information to be exempt from public disclosure.

J) VOICE MAIL AND PERSONAL MOBILE DEVICES/COMPUTERS

1. Voice mail messages and other similar kind of electronic transitory messages are intended to be brief, transitory messages instead of non-transitory messages, and therefore transitory voice mail messages and other similar kind of electronic transitory messages need to be retained by a City employee or official only until obsolete, superseded, or the administrative value is lost. Land-line voice mail messages on the City's phone system are not required to be retained for longer than ten (10) days. In the event an employee or official receives a non-transitory voice mail message or a transitory voice mail message on his/her mobile device or land-line 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.

2. City business transacted on a personal mobile device or computer may be subject to disclosure under the Public Records laws. Furthermore, transacting City business on a personal mobile device or computer may result in a request to inspect the personal mobile device/computer or its contents, thereby placing in jeopardy the privacy of communications that do not meet the definition of a "public record" under the Public Record Law. If an employee/official decides to use his/her personal mobile device or computer to transact City business, it shall be the employee's/official's responsibility to take all appropriate steps at his or her own cost and discretion to ensure that any public record generated on such device or computer is retained consistent with the Public Record Law so that, if necessary, the public record may be produced for inspection and/or copying upon request. However, nothing in this subparagraph shall be construed or interpreted to mean that an employee/official who uses a personal mobile device or computer to conduct City 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.”

K) FEES

1. **Copying.** If documents are requested in hard copy or disc format, they may be provided upon payment upon the actual duplication and material costs. Any person requesting copies of public records shall be charged fee for the actual cost of copying and duplication and material costs, as follows:

(a) Fee for Duplication of Public Records:

<u>Format:</u>	<u>Cost Per Page:</u>
14"x8-1/2" or less - one sided	\$0.15
14"x8-1/2" or less - two sided	\$0.20
11"x17"	\$0.25
14-7/8"x11" (greenbar, computer)	\$0.25
All other printed copies	Actual cost of duplication
Tapes/Disks	Actual cost of duplication

(b) Fee for Certified Copies:

In addition to material costs and the actual cost of duplication, a \$1.00 fee shall be charged for each certified copy of a public record.

2. **Special Service Charge for Extensive Clerical or Supervisory Assistance or Extensive Use of Information Technology Services.**

(a) If 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, in addition to the actual cost of duplication, a special service charge may be imposed. The actual charge shall be reasonable and based upon the labor costs actually incurred or attributable to the City for the clerical and supervisory assistance required to respond to the public records request. This charge is separate from and in addition to the actual duplication and material cost and the costs related to the extensive use of information technology services.

(b) The amount to be charged shall reflect the actual hourly rate of the individual providing the service. If the individual is a City employee, the hourly rate shall be calculated based on the employee’s current salary and benefits, and if the individual is a City contractor, the hourly rate shall be the current hourly rate actually invoiced the City by the contractor for the individual providing the service. In keeping with the City of Winter Springs’ commitment to provide open access to public records, there will be no special service charge for requests requiring thirty (30) minutes or less in actual labor. However, when a person requests

public records which require more than thirty minutes in actual labor, or repeated requests totaling more than thirty minutes within a one calendar week period (seven consecutive days starting on Sunday) or extensive use of information technology, the person will be charged for all time expended above thirty minutes and the cost related to the extensive use of information technology. Based upon the labor to provide the service, the cost of scanning/copying, and cost related to the extensive use of information technology, a reasonable deposit of 50% of the estimated cost to process the request will be collected in advance prior to the City expending additional labor and cost to complete the request, and the remaining actual cost balance must be received from the requestor prior to delivery of the records. Monies collected by the City exceeding the actual cost of assistance and scanning/copying shall be returned to the person requesting the public records.

3. **De minimis public service exceptions.** Nothing herein shall prohibit the City from providing free copies of public records to the news media, government agencies, and public service charitable groups for purposes of disseminating information to the public, such as, copies of City newsletters, City Commission and other City board agendas, and press releases.

4. **Final Invoice.** Prior to distributing responsive records to the requestor when a fee is required by this Public Records Policy, the Custodian, or designee, shall prepare and provide the requestor with a final invoice detailing the actual cost of materials, the actual cost of duplication, and the actual special service charge to be imposed. The invoice shall provide a breakdown of the special service charge, including what individual was involved in the preparation of the response to the records request, how long each individual spent preparing the response to the records request, the hourly rate of each individual tasked with preparing the response to the records request, and the cost of any additional information technology resources expended. Payment of the final invoice shall be required before responsive records are provided to the requestor. The City Clerk will maintain a file of fee estimates and final invoices until disposed of in accordance with Section L of this Policy.

L) DESTRUCTION OF PUBLIC RECORDS

Pursuant to the requirements of section 119.041, Florida Statutes, the Custodian, in coordination with the City Clerk to the extent necessary, shall systematically dispose of public records no longer needed by the City, in accordance with the records and information management program of the State Library & Archives of Florida of the Department of State.

M) RELATIONSHIP TO FLORIDA AND FEDERAL PUBLIC RECORDS LAWS

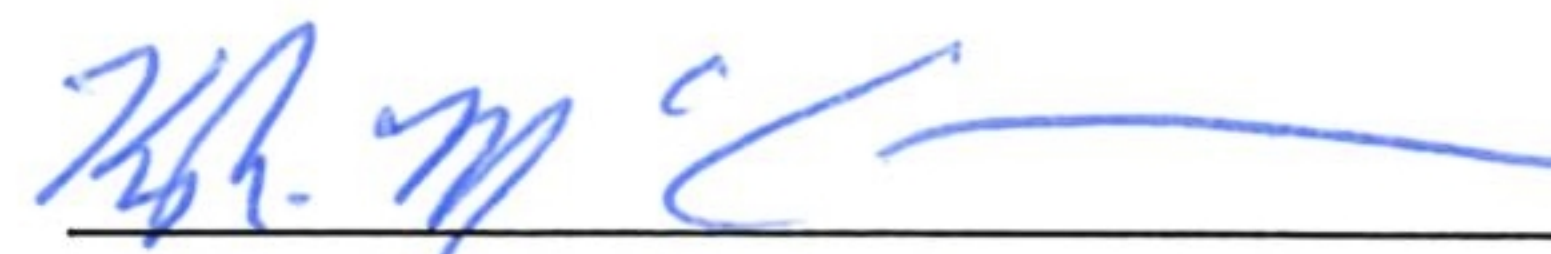
Nothing herein is intended in any way to conflict with or abrogate chapter 119, Florida Statutes, or any other applicable Florida or federal laws. In the event of any conflict between this Policy and any Florida or federal law, the conflicting provision of the Florida or federal law shall prevail and apply.

Section 4. Repeal of Prior Inconsistent Resolutions. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of the conflict. In addition, Resolution No. 2013-07 is hereby expressly repealed and superseded by this Resolution.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, word, or portion of this resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereto.

Section 6. Effective date. This Resolution shall become effective immediately upon adoption by the City Commission of the City of Winter Springs, Florida.

DONE AND ADOPTED in regular session of the City Commission of the City of Winter Springs, Florida, this 11th day of December, 2023.



KEVIN McCANN, Mayor

ATTEST:



CHRISTIAN GOWAN, City Clerk

Approved as to legal form and sufficiency for
the City of Winter Springs only:



ANTHONY A. GARGANESE, City Attorney

