

County Council of Cuyahoga County, Ohio

Ordinance No. O2013-0002

Sponsored by: Councilmember Miller	An Ordinance amending the Public Records Policy for Cuyahoga County, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, on January 3, 2011 the Cuyahoga County Council passed Ordinance No. O2011-0003, which adopted a Public Records Policy for Cuyahoga County, and was amended by Ordinance No. O2011-0012; and

WHEREAS, it is necessary to amend the Public Records Policy to clarify potentially ambiguous provisions therein and to ensure that the Public Records Policy accurately reflects Council's original intent in enacting the Public Records Policy; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to continue the usual and daily operation of the County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Chapter 106 and Section 204.02(A) of the Cuyahoga County Code, previously enacted in Ordinance O2011-0012, as amended, are hereby amended to read as follows:

Chapter 106: Public Records

Section 106.01: Rationale

Believing that open government leads to a better-informed citizenry, greater public participation in government, better government, better public policy, and more effective use of public resources, the County Council establishes this Public Records Policy enacted in Chapter 106 of the Cuyahoga County Code to ensure the preservation and public accessibility of records relating to all functions of Cuyahoga County government. Cuyahoga County's policy in all of its functions is to strictly adhere to all of its obligations under Ohio's Public Records Law and to exceed those obligations whenever it is practical and makes sense to do so.

Section 106.02: Definitions

As used in Chapter 106 of the Cuyahoga County Code:

- (A) “Committee” shall include subcommittees.
- (B) “Public office” includes the following:
 - (1) The office of the County Executive
 - (2) The Cuyahoga County Council, including all of its committees
 - (3) All departments, divisions, offices, or other organized bodies operating under the administration of the County Executive,
 - (4) The Cuyahoga County Prosecuting Attorney,
 - (5) All Boards, Commissions, and Advisory Councils to which the County Executive and/or the County Council appoints at least a majority of its members,
 - (6) All Boards, Commissions, Advisory Councils and any similar body created by the Cuyahoga County Charter, the County Council, and/or the County Executive.
- (C) As used in Section 106.02(B) of the Cuyahoga County Code, a “similar body” must be formally organized, be on-going, and be involved in making or advising on public policy decisions.
- (D) “Public record” includes any document, device, or item, regardless of physical form or characteristic, including electronic records, created or received by or coming under the jurisdiction of any public office, which serves to document the organization, functions, policies, decisions, procedures, operation, or other activities of the office. All records which meet this definition are public records, unless exempted under section 149.43 of the Ohio Revised Code.
- (E) “Electronic record” includes prepared documents such as word processing documents, spreadsheets, and graphic presentations as well as written electronic communications, including but not limited to electronic mail and text messages.

106.03: Scope of Chapter 106

Chapter 106 of the Cuyahoga County Code is adopted as the public records policy, required under Section 149.43 of the Ohio Revised Code, for every public office in Cuyahoga County government, as public office is defined in Section 106.02(B) of the

Cuyahoga County Code, over which the Cuyahoga County Council has legislative authority.

106.04: Public Records

(A) Maintenance of Public Records

All public offices within the scope of Chapter 106 of the Cuyahoga County Code shall organize and maintain all their public records so that they are readily available for inspection and copying in accordance with the Ohio Public Records Law and the Public Records Policy of Cuyahoga County.

(B) Maintenance of Electronic Mail

- (1) All electronic mail sent or received through the Cuyahoga County Department of Information Technology system shall be the property of Cuyahoga County. The necessity to maintain electronic mail as public records shall depend on the content of the records, not on the medium in which it is kept. It shall be the responsibility of the public records managers and each individual user to ensure that electronic mail is maintained in accordance with the records retention schedule for each office, and that records which must be kept for an extended length of time will not be placed in files where they will be automatically deleted.
- (2) Each person covered by Chapter 106 of the Cuyahoga County Code shall also ensure that all public record electronic mail sent or received outside of the County Department of Information Technology system are maintained so that they are readily available for inspection and copying in accordance with the records retention schedule for each office.

(C) Designation of Countywide Public Records Manager

The County Archivist is hereby designated as the Countywide Public Records Manager and shall do the following:

- (1) Manage the public records of Cuyahoga County to ensure that they are organized so as to be readily available to the public for inspection and copying and are maintained and disposed of in accordance with the records retention schedules of the various offices within Cuyahoga County government.
- (2) Assist the public records managers of the various public offices in Cuyahoga County in implementing a sound and consistent countywide public records process in accordance with Chapter 106 of the Cuyahoga County Code.

- (3) Assist the public offices within the scope of Chapter 106 of the Cuyahoga County Code in preparing and updating public records retention schedules.
- (4) The County Archivist shall monitor departmental compliance with provisions of Chapter 106 of the Cuyahoga County Code with respect to records retention schedules and disposition of records, and shall provide a status report to the County Executive at the end of each calendar year.

(D) Designation of Deputy Countywide Public Records Manager

The County Executive shall designate one member of the executive staff as Deputy Countywide Public Records Manager, who shall do the following:

- (1) Assist the Countywide Public Records Manager in the performance of his/her duties;
- (2) Maintain and administer the public records request log provided for in Section 106.06(E) of the Cuyahoga County Code.
- (3) Work with each public office to determine what kinds of public records requests are received by that office that relate to personal or business matters, rather than governmental operations, and are not required to be included in the public records request log.
- (4) Provide a copy of Cuyahoga County's Public Records policy to each public records manager and obtain a written acknowledgement from each records manager that the policy was received. A record manager's receipt and acknowledgement of a County Human Resources Policies and Procedures Manual that contains the County's Public Records policy shall satisfy the requirements of this subsection.
- (5) Serve as the public records manager for the County Executive's office.

(E) Designation of Public Records Manager

- (1) Each public office shall designate a public records manager who shall be responsible for the maintenance of the public records for that office and for handling public records requests directed to that office.
- (2) For the following offices, the person designated as public records manager shall be an employee of the office who works at the principal place at which that office does business:
 - (a) the County Executive, including all executive office staff
 - (b) the County Council
 - (c) the Department of Law
 - (d) the Sheriff

- (e) the Medical Examiner
- (f) the Clerk of Courts
- (g) the Department of Development
- (h) the Department of Information Technology
- (i) the Department of Public Works
- (j) the Department of Purchasing
- (k) the Department of Human Resources
- (l) the Fiscal Officer
- (m) the Cuyahoga Job and Family Services
- (n) the Division of Children and Family Services
- (o) the Division of Senior and Adult Services
- (p) the Department of Health and Human Services
- (q) the Agency of the Inspector General
- (r) the Department of Communications
- (s) the Department of Public Safety and Justice Services
- (t) the Department of Consumer Affairs
- (u) the Department of Internal Auditing
- (v) the County Treasurer
- (w) the County Prosecutor

- (3) Each office not listed in subsection 2 of this section shall designate a public records manager who shall be one of the following:
 - (a) an employee of that office or an officer of a Board, Commission, or Advisory Council,
 - (b) the Deputy Countywide Public Records Manager, or
 - (c) an employee of Cuyahoga County, approved by the Deputy Countywide Public Records Manager, in another office with responsibilities related to those of the designating office.

(F) Public Records Manager for County Council

The Clerk of Council is hereby designated as public records manager for Cuyahoga County Council.

(G) Records Retention Schedules

Each public office shall have a records retention schedule in place, which shall specify, consistent with state law, the methods by which and the length of time that records shall be kept. Such schedule shall be kept on file by each public office as a public record. For any office that has a records retention schedule in place at the time that Chapter 106 of the Cuyahoga County Code becomes effective, that records retention schedule shall remain in effect until it is amended according to the procedure set forth in Section 149.38 of the Ohio Revised Code. Each public office that does not have a records retention schedule in place at the time that Chapter 106 of the Cuyahoga County Code becomes effective shall contact the Cuyahoga County Archives to create a records retention schedule, in

accordance with the procedure set forth in Section 149.38 of the Ohio Revised Code, not later than September 30, 2013.

(H) Interim Transient Records Retention Schedule

Except to the extent that a different records retention schedule on transient communications is required for an office by state law, each public office that does not have a records retention schedule on transient communications in place at the time that Chapter 106 of the Cuyahoga County Code becomes effective shall use the transient records retention policy and schedule submitted by the County Executive and approved by the Cuyahoga County Records Commission, created in Section 204.02(A) of the Cuyahoga County Code, on August 15, 2012, until such time as the office's records retention schedule on transient communications is updated, according to the procedure set forth in Section 149.38 of the Ohio Revised Code.

(I) Publication of Public Records Policy

- (1) Each public office having public office space shall prepare a poster which shall describe the public records policy of that office, explain how to obtain public records, and name the public records manager for that office. The poster shall be displayed in a conspicuous place at the office and at any branch office where the office conducts business. Each office shall post the same information and its public records retention schedule on its web-page on the county's website.
- (2) The County Executive and the Clerk of Council shall each post on their respective web-pages the full Public Records Policy of Cuyahoga County, a summary of that policy, instructions on how to obtain public records, and a list of all of the public records managers for Cuyahoga County government and their contact information.
- (3) The Human Resources Policies and Procedures Manual issued to all employees shall include the County's Public Records policy. When any changes to the County Public Records Policy are made, the Director of Human Resources is hereby authorized to update the Human Resources Policies and Procedures Manual, and the Clerk of Council is authorized to update the Cuyahoga County Code with the approval of the Director of Law, to reflect those changes.

(J) County Website

The County shall maintain a readily accessible website, which shall include separate pages for the County Executive, the County Council, and each department in County government. The County Executive and the Clerk of County Council shall ensure that the website is regularly updated to provide

current information, including the notice, agenda, minutes, and reports of all public meetings conducted by offices within the scope of Chapter 106 of the Cuyahoga County Code and instructions on how to obtain public records.

106.05: Public Records Requests

(A) Form of Records Request

Any person requesting public records shall identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records requested. No specific language or form is required to make the request. If the records request is not sufficiently clear, the public records manager must contact the requestor for clarification, and should assist the requestor by providing information about the manner in which the office keeps its records.

(B) Identity of Requestor Not Required

The requestor is not required to put a public records request in writing and does not need to provide his/her identity or the intended use of the records requested. The public office may request this information, particularly to aid in complying with the request, but must clearly state that providing this information is voluntary.

(C) Availability of Records

Records shall be made available promptly for inspection or copying. Public records requests shall be given priority attention in any office receiving them, but reasonable time shall be allowed to comply with requests that are large, involve records stored other than at the site where the request was made, or involving records that must be inspected for possible redaction of information exempt from the public records law. Whenever a request is received that cannot be complied with expeditiously, the public office shall provide the requestor a receipt acknowledging and describing the public records request and may provide an estimate as to when the production can be provided. An oral response shall satisfy the requirement of a receipt when the requestor does not provide an email or postal address.

(D) Denial of Request and Redaction of Records

If a public records request is denied, in part or in whole, the public office shall provide the requestor with an explanation for the denial as provided for in Section 149.43(B)(3) of the Ohio Revised Code.

(E) Public Records Request Log

- (1) Each office shall maintain a log of all public records requests received that relate to governmental operations and shall forward a copy of the log no later than at the end of each week to the Deputy Countywide Records Manager, who shall maintain a countywide public records log. Each office shall, with the approval of the Deputy Countywide Public Records Manager, determine what kinds of public records requests received by that office relate to personal or business matters, rather than governmental operations; and these requests shall not be required to be included in the log. For each public records request required to be included in the public records request log, the following information shall be provided:
 - (a) The office that received the request,
 - (b) The date that the request was received,
 - (c) The name of the requestor, if known,
 - (d) A brief description of what records were requested,
 - (e) The date that response to the request was completed,
 - (f) A brief description of any denials or redactions required.
- (2) Except as otherwise provided by court order or law, the Deputy Countywide Public Records Manager may establish procedures for logging public records requests.

106.06: Costs of Public Records

(A) County Council to Determine Copy Costs for Public Records

Persons requesting copies of public records shall be required to pay for the cost of making copies, at a rate not to exceed the actual cost of making copies, unless otherwise addressed in Section 106.06(B). Payment in advance may be required.

Starting in calendar year 2011, the County Council shall biennially (once every two years) determine and establish the copying costs for public records.

(B) Interim Copy Costs for Public Records

Except as otherwise provided by court order or law, the following copying costs shall apply until the County Council first determines and establishes copying costs for public records:

- (1) The charge for paper copies shall be three cents (\$.03) per page. The charge shall be waived when less than one dollar (\$1.00).

- (2) The charge for computer files downloaded to a compact disc shall be the actual cost, not to exceed \$1.26 per disc. The charge shall be waived when only one (1) disc is required to fulfill the request.
- (3) There shall be no charge for copies provided by email.
- (4) Each public office shall have the discretion to waive copying costs when it determines that it is practical and cost-effective to do so, provided that the public office follows a consistent policy on waiver of copying fees for all requestors.

106.07: Public Records Training

All elected public officials and public records managers shall attend training on public records policy approved by the Ohio Attorney General, as provided for in Section 109.43 of the Ohio Revised Code. Each public office shall encourage other appropriate persons to receive public records training.

204.02(A): County Records Commission

1. Creation of County Records Commission

There is hereby created, the County Records Commission, which shall succeed and replace the current County Records Commission. The County Records Commission shall consist of the County Executive, who shall serve as chairperson, the President of County Council, the Prosecuting Attorney, the Fiscal Officer, and the Clerk of Courts of Common Pleas.

2. Appointment of Designees

Each member of the County Records Commission shall appoint one designee, an employee of his/her office who is knowledgeable about the maintenance of public records, who shall attend meetings of the County Records Commission whenever the member is unable to do so. The County Executive may appoint his or her designee from any County office or department.

3. Powers and Duties of County Records Commission

The County Records Commission shall have all the powers and perform all the duties of County Records Commissions provided for in Section 149.38 of the Ohio Revised Code, including, but not limited to, the power to recommend applications for one-time disposal of records or proposed records retention schedules to the Ohio Historical Society.

4. Rules and Procedures of the County Records Commission

The County Records Commission shall adopt its own rules and procedures, which shall be consistent with Section 149.38 of the Ohio Revised Code. Until such time as the County Records Commission adopts such rules, it shall operate under the rules of the prior County Records Commission that existed prior to the enactment of this Section of the Cuyahoga County Code.

5. Meetings of the County Records Commission

The County Records Commission shall meet at the call of the chair as often as needed to respond to proposed records retention schedules and proposed one-time disposals of records, but shall meet a minimum of once every six (6) months.

6. County Records Commission Action on Records Proposals

Within sixty (60) days after receiving a request for one-time disposal of records or a proposed records retention schedule from any office, the County Records Commission shall either approve the request and send it to the Ohio Historical Society for its consideration or return the request disapproved to the office that submitted it with a letter stating the reasons for disapproval.

SECTION 2. It is necessary that this Ordinance become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 3. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Miller, seconded by Ms. Conwell, the foregoing Ordinance was duly enacted.

Yeas: Gallagher, Schron, Conwell, Jones, Rogers, Simon, Greenspan, Miller, Brady, Germana and Connally

Nays: None

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: January 22, 2013

Committee(s) Assigned: Council Operations & Intergovernmental Relations

Committee Report/Second Reading: May 14, 2013

Legislation Substituted on the Floor: May 28, 2013

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