

COPY

KIRK • PINKERTON

MEMORANDUM

TO: Janet Jones, Chair

CC: Trailer Estates Board of Trustees

FROM: Mark P. Barnebey, Esquire ^{12/5/07}
 Scott E. Rudacille, Esquire *MPS*

RE: Public Records Policy Issues

DATE: December 5, 2007

Attached is our response to questions raised regarding the proposed Public Records Policy.
 If you have any questions or wish to discuss this further, please do not hesitate to contact us.

3/ 5
COPY

TRAILER ESTATES
Questions Regarding
Public Records Policy

QUESTION:

1. Currently the Video/Computer Club makes a VHS recording of our board meetings and workshops. They copy this tape to a DVD and make it available to the public through the TE Office. There is a cost associated with this, which is then put in the Video/Computer Club's account. These are unofficial copies of the meetings and workshops and will say so on the DVD cover. Are we required to "officially" videotape our meetings?

ANSWER:

No, the Board is not required to videotape the meetings. However, if the Board does videotape the meetings, then they are a public record.

QUESTION:

2. We audiotape our board meetings and workshops. Our old tapes are in cassette form, and must be retained for another year. Are we required to provide the old minutes in cassette form if they are requested in that form?

ANSWER:

If the District maintains copies of the meetings in cassette form, then the public is entitled to listen to or obtain a copy of the cassettes.

3. For individuals who request access to the old or current audiotapes (cassette or DSS/Olympus), are required to provide a listening station in the office, under the supervision of staff, just like we do for reading documents?

ANSWER:

The District is required to make the tapes available for review. It is recommended that such access be under the supervision of staff in order to protect the records.

COPY

QUESTION:

4. Does the law spell out what we can and can't include as we calculate the fees for the copies (cost of duplication materials, machine, etc.)?

ANSWER:

If the record is 14" by 8.5" or smaller, the District is authorized under Section 119.07, Florida Statutes, to charge up to \$0.15 for a one-sided copy and \$0.20 for a two-sided copy. For any other records, the District is authorized to charge its "actual cost of duplication" of the record. This term is defined in Section 119.01(1), Florida Statutes, to include "the cost of materials and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication."

There is an exception that allows the District to charge a special service charge when the nature or volume of the request requires extensive supervisory or clerical assistance.

QUESTION:

5. We have written a draft of the Public Records Policy for TE. There is some discussion about access and the concern about exempted materials, etc. Could you please review this draft and make recommendations?

ANSWER:

We have reviewed the proposed Public Records Policy Draft, dated 11/16/2007, and have the following comments:

1. We would recommend removing the description of what may constitute public records in the second sentence of Paragraph 1. It is really unnecessary and may cause confusion.
2. We recommend changing the third sentence in Paragraph 1 to state that video or audio recordings of the meetings will be made available for copying or inspection in the form in which they are maintained.
3. The last sentence in Paragraph 1 should either be omitted or should state that public records may have to be altered to redact exempt of confidential information, such as certain medical information, social security numbers, etc. If such information is redacted from requested records, the District must provide a written explanation as to why the District believes the information is exempt or confidential.
4. There is a statement in Paragraph 2 that reads "Requests for information will normally be processed as soon as possible." The word "normally" should be struck from this line. Public records requests should always be processed as quickly as reasonably possible.

COPY

5. We would recommend that there be a clarification that the Request Form is not required, and is only used to assist District Office staff in providing the requested documents.

6. As for the timetable for review, we would recommend removing the statement that the requestor must "Return for review". It should say that all public records in possession of the District will be made available for inspection upon request. However, if the nature or volume of the request is such as would require either extensive clerical work to compile the requested records or extensive supervisory assistance, staff will work with the requestor to provide the records as soon as possible.

7. The denial process is addressed in Question 6. below.

QUESTION:

6. We have added an appeal process for a denial. Would you advise this? Should we put a time limit for when an appeal of a denial must be requested?

ANSWER:

An appeal process should not be necessary for public records requests, as there should never be a "denial". If there is a request for documents which the District believes may contain exempt or confidential information, there should be consultation with the Board Attorney. In those cases, the District is required to provide a written explanation as to the confidential or exempt nature of any information that is withheld.