

City of Gustavus

Policy and Procedure for Public Records Management

Overview:

The City of Gustavus, during the course of conducting its everyday business, generates numerous documents, files, correspondences, e-mails, memorialization and the like. Some of these materials constitute an important public and historical record and should be retained, while others are of a more transitory nature and are of value only until they have served their immediate purpose. As a body, they represent a record of the activities of the City and provide a fundamental method for the public to understand, appreciate, challenge or otherwise interact with the process of governance.

It is the purpose of this policy to establish definitions of various categories of public records as they relate to the City of Gustavus, recommend methods for how they are created and stored, establish a set of rules on how the public can access them, and set forth a schedule and process whereby those records are retained and/or disposed of.

Definitions and General Rules:

What is the definition of 'public records'? State law answers the question 'what is a record?' for all municipal governments in Alaska in AS 40.25.100-.220. AS 40.25.220(3) defines them as "books, papers, files, accounts, writings, including drafts and memorialization of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency."

Who has access to public records? As a general rule, "Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours" See AS 40.25.110(a). This statute assumes that virtually all records are public and subject to inspection, with certain limited exceptions. And as the clause implies, it is up to the City of Gustavus to establish 'reasonable rules' for the public access to those records.

What is a records retention schedule? As any citizen might suppose, retaining the entire "storm of paper" that emanates from City Hall is an impossible task, and with the advent of e-mail, the task is compounded. It is incumbent upon the City of Gustavus to develop a records plan and retention schedule to manage this situation.

What would be considered a non-record? Documents or materials that do not set policy, establish guidelines or procedures, certify a transaction, become a receipt or indicate the business process of the City. A non-record tends to be informational by nature, short-lived, with no historical significance, does not show evidence of the organization or operation, and does not need to be retained after it has served its purpose. Examples include:

- Routing requests for information or publication, which require no administrative action, policy, decision or special compilation or research, and copies of replies;

- Letters of transmittal that do not add any information to that contained in the transmitted material;
- Quasi-official notices including memoranda and other records that do not serve as the basis of official actions (i.e., holiday notices, meeting information, etc.)

When can a public record be withheld? A record may be withheld from public disclosure only if a legal exception that authorizes withholding access can be identified. Exceptions are set out in State statute or established through court decisions and generally pertain to issues of confidentiality. The burden of proof for withholding public access rests with the municipality.

What records are NOT subject to public inspection? Certain kinds of records are not subject to public inspection under AS 40.25.12.120(a) and decisions of the Alaska Supreme Court. The exceptions are:

- Confidential attorney-client records
- Records that come within the Alaska constitutional right to privacy
- Most personnel records
- Most records concerning conflict of interest and ethics investigations
- Records required to be kept confidential under City of Gustavus code. See 2.30.060(b)(2), 2.60.030, 4.14.070(g), and 6.01.050(a).
- Records required to be kept confidential by Federal or State law
- Records compiled for law enforcement purposed, under certain circumstances
- Retirement records
- Records that come within 'deliberative process privilege' (see below)

How is confidentiality protected? Except upon court order, confidential information shall be made available only to officials and employees of the City whose job responsibilities require such information. Confidential information shall be protected from disclosure by adequate physical, electronic, and procedural controls.

Does labeling a document "draft" make a difference? No. Draft documents are public records, as are final documents. See AS 40.25.220(3).

Does labeling a document "confidential" make a difference? Labeling a document "confidential" may make a difference because it clearly shows the intent of the author that the record should be kept confidential. However, a label alone does not make a record privileged.

What about e-mail? E-mail and other electronic documents and records are subject to the same rules of records management and public disclosure as traditional hard-copy files.

What is the "deliberative process privilege"? The deliberative process privilege is a judicially recognized exception to disclosure. The Alaska Supreme Court (*Gwich'in v. State* [2000]; *Capital Info Group v. State* [1996]) ruled that "Public officials may assert [the deliberative process] privilege and withhold documents when public disclosure would deter the open exchange of opinions and recommendations between government officials. The privilege is intended to protect the executive's decision making process, its consultative functions, and the quality of its decisions." The public's right to know

and the government's interest in confidentiality require a "balancing test" between the interests, and, from a policy standpoint, the City of Gustavus communications that are exempt from public disclosure are only those listed in State statute, or are matters taken by the City Council while in Executive Session.

Can a person involved in litigation against the City of Gustavus make a request for public records if the request pertains to the case? No. That person must instead use the rules of procedure applicable in a court or administrative proceeding.

I am a member of a committee or the Council and I get an information packet at the start of each meeting. Do I need to retain all of the items in that packet as a record? No. If a document is obviously a copy of a master document, or is stamped 'copy', there is no need to retain it. The City Clerk, or Committee Chair will retain master copies of such documents as records. However, if in the course of the meeting you take notes on that document, the document then become influential in the decision-making process of the Council or Committee, and you should retain those notes and submit them as a record.

What does historical record mean? Many of these public records constitute historical documents that reflect important developments and trends in the public life of Gustavus, and as such should be retained for future reference. Any record listed for permanent retention on the schedule is considered an historical record. In addition, there are items generated throughout the course of events of City life that warrant retention as historical records, such as photographs, awards or other mementos.

Hard-copy Documents

As a rule, the generation and management of hard-copy documents is detailed in the records retention schedule. Transitory documents – records that are created primarily for the informal communication of information – have the shortest retention life, whereas documents that reflect communications designed for the perpetuation or formalization of knowledge merit longer retention. Documents that lie at the foundation of City function and operation merit permanent retention. See the Records Retention Schedule for details (Appendix 1).

E-mail

Many e-mails are messages that contain pertinent information influencing the decision making process or are the outcome of that decision making process and therefore constitute a public record and must be retained. City Councilmen, Committee members and City employees are responsible for retaining all e-mails generated in the conduct of City business through electronic mailbox folders corresponding to the Records Retention Schedule and shall file records into those folders. Individual folders shall be consolidated from individual mailboxes into central files by the records manager on a periodic basis. E-mails of a general informational nature that are sent to multiple addresses, that deal with simple matters such as setting up meeting dates or teleconferences, or are general public announcements, do not constitute records and can be discarded. General rules to follow for retaining e-mail messages include:

E-mails that constitute records are filed in their appropriate folders on the City of Gustavus electronic file system.

If in doubt as to the importance of an e-mail message's content, the committee member shall e-mail the City Clerk, or City Council member should file the e-mail in the appropriate file in the City's e-mail system and advise the City Clerk, who will make the decision regarding the need to retain the message.

If the e-mail deals with specific issues that might influence the character of an employee of the City of Gustavus or another committee member, OR, if the e-mail deals with impending legal action, sensitive financial information pertaining to the City of Gustavus, or sales or bed tax information pertaining to a business, it must be filed in a secure folder. Only the City Clerk and Council members have access to these files. Such e-mails generated from a committee member should only be sent to a Council member or the City Clerk for filing.

All files not deemed of a sensitive nature as described in the above paragraph are a public record and are available for public review via a link on the City of Gustavus website.

Telephone and Verbal Communications

Some City **business is conducted over the telephone** or in conversations between individuals or groups. Often phone calls deal with transitory transactions and there is no documentation of them, nor need to do so. However, on occasion there are teleconferences or meetings with representative of State or Federal agencies, interactions with the City attorney(s), and others, **during which information that can influence or direct the decisions of the City is shared.** During such interactions, **it is mandatory to take notes or compile memorializations that reflect the content of the dialogue.** These notes and memorilizations are public records and shall be retained. The Conversation Record form (Appendix 2) is a good way to formally capture this information.

Procedures to follow for a public records request:

All requests for public records should be made to the City Clerk using the Request for Public Records Form (Appendix 3). If the request is made by e-mail, an electronic version of the form should be made available to the requesting party.

The City Clerk should advise the Mayor of all records requests, and feel free to consult with the City attorney if the requests are of a legal nature.

The City Clerk has ten (10) business days from receipt of the Request for Public records Form to respond to the request. The response should be prompt, but should not impact the normal work schedule of the City Clerk. If the response will require more than ten (10) business days, the City Clerk shall advise the requestor in writing, prior to the expiration of the initial ten (10) day period, of the need for an additional number of days, and specify one or more of the following reasons: voluminous amount of records requested; need to search for and collect records from other offices; need to consult with someone else who is not present; request came at a time of peak workload; need to consult with City attorney.

The City Clerk, in the process of fulfilling a public records request, is not required to create any document that does not already exist.

The City Clerk is not required to organize public records in response to the request.

The City Clerk is not required to manage or manipulate data, nor create new records, such as spreadsheets, in response to the request. The City Clerk may supply the requested records in either their original form (i.e., electronic or paper) or in a form specified by the requestor, at the City Clerk's discretion.

The requestor must describe the desired records in sufficient detail to enable the City Clerk to locate the records.

The City Clerk should ask for clarification or additional information if there is confusion or if the request is unclear. The City Clerk should make every reasonable effort to comply with the request, but is not bound to spend more than five (5) hours total time searching for records.

All records requests pertaining to committees shall be administered by the City Clerk to assure compliance with policy. If committee members convey records to requesting parties without consulting with the City Clerk, this does not constitute a public records request.

The requesting party is responsible for covering the cost of duplication, as established in City of Gustavus resolution. If the City Clerk estimates a substantial cost for the request, the Clerk shall advise the requestor by phone, documenting the call using the Conversation Record Form, or formally, in writing of the estimate prior to initiating the work and inquire as to whether the requestor wants to narrow the request or proceed. The person's response should be in writing and submitted to the City Clerk. E-mailing the response is acceptable.

If the production of records sought by a requestor in a calendar month exceeds five (5) (5) person-hours, the City must require the requestor to pay the personnel costs above those five(5) person-hours prior to completion of the search and copy of the records.

The City Clerk should furnish all requested records that are subject to disclosure, and may not request a justification for or an explanation of the intended use of the information requested.

If a record contains both disclosed (or non-sensitive) and non-disclosed (or sensitive) information, the non-disclosed information should be segregated and withheld by such means as redacting or blackening out the non-disclosed information, and the disclosed information provided.

If the request is denied in whole or in part, the City Clerk must explain in writing what is not being provided and the legal basis for nondisclosure.

A denial, in whole or in part, may be appealed to the Alaska Superior Court.

Historical Records and Materials

Only some of the records that meet the criterion described above qualify as historical records, and not all materials that revolve around City activities constitute records, but they might be materials that are worthy of permanent retention.

Any item listed as 'permanent' on the Retention Schedule is considered a historical record, and must be retained in perpetuity in the City's filing system.

Other historical materials worthy of being retained might include such items as photographs of City events, Council members or community members, memorabilia generated during community activities, old records left over from the activities of the Gustavus Community Association, or any such items that pertain to the history of development of the community of Gustavus. Judgment should err on the side of retention if there is any question.

Record Retention Schedule and Storage

Per municipal code 2.70.030, the Mayor shall approve a record retention schedule that details the types of records that will be retained and the period of time for which they will be retained, whether the period be days, years or permanently. When records are slated to be destroyed in accordance with the schedule, they will be catalogued on the Certificate of Record Destruction (Appendix 4). This form will be retained permanently and will serve as a voucher of all records destroyed according to the retention schedule.

Due to the limited storage available at the City Hall, records may be kept at another location to be determined by the Mayor and/or City Council. Sensitive records shall be stored in locked filing cabinets.