

Diaz-Greco, Gilma M. (COE)

From: Centorino, Joseph (COE)
Sent: Monday, January 13, 2014 4:55 PM
To: Dratler, Thomas (ITD)
Cc: Diaz-Greco, Gilma M. (COE); Sanchez, Gerald (CAO)
Subject: INQ - Thomas Dratler, Senior Systems Analyst (ITD) (Public Records)

Mr. Dratler:

I apologize for not getting back to you sooner on this. You have inquired regarding when an inspector's handwritten field inspection entry becomes a public record prior to the entry of a final corrected and completed report that is finally inserted into an operational system database, after it has been formatted, reviewed and, possibly, changed by a supervisor. You have also inquired regarding the extent to which inspection results entered directly into a computer system are considered public record subject to retention where there may be history of modifications.

In general, information recorded concerning the transaction of official business becomes public record immediately upon the creation of the record where the material prepared is intended to perpetuate, communicate or formalize knowledge of some type. When previous versions of such records have been maintained by a public agency, those records would have to be provided in response to a public records request.

It would appear from your questions that the preliminary entries that you are concerned about are not made for the purpose of perpetuating or formalizing knowledge. Therefore, the issue comes down to whether they are intended to communicate knowledge. Since they are submitted to a supervisor for correction or approval, I would conclude that they are made for the purpose of communicating knowledge and are, therefore, subject to the Public Records law and disclosure immediately upon creation or entry. Of course, there may understandably be logistical problems that might prevent immediate disclosure, but to the extent that they can be made available upon receipt of a public records request (which I presume would not happen very often in these circumstances) they would be subject to disclosure.

The more difficult question is whether and for how long such records need to be kept as public records. The Division of Library and Information Services in the office of the State of Florida Secretary of State maintains a records retention schedule for various public records. It details specific retention periods for some public records, but leaves others open to various factors that need to be considered in deciding whether to discard a record. I will note several of them which could be applicable to your department:

- 1) Drafts and Working Papers (Item #242)-- provides that such items should be kept until they are obsolete, superseded or administrative value is lost;
- 2) Electronic Communications—retention will depend on content, nature, and purpose of the record as well as the legal, fiscal, administrative and historical value of the record;
- 3) Transitory Messages (Item #146)—should be retained until obsolete, superseded or administrative value is lost.

As you can see from these provisions, it is not at all certain that the preliminary entries, although public record, need be kept for very long at all, particularly where they become superseded and lose all administrative value following the supervisor's corrections and their entry into the system. At the same time, however, I can imagine that some projects or inspections may occur on very important or sensitive projects, or projects that are subject to likely litigation. In these circumstances, it might be wise for the department involved to have a consistent policy where a determination is made to maintain such records because of their possible legal, fiscal or administrative value. These judgments, however, are well outside the purview of the Ethics Commission. My suggestion is that your department head or designee work out a

policy with the County Attorney that adequately addresses these issues. Where appropriate, I would be happy to assist in that effort.

I hope that this is helpful in formulating whatever policies ITD needs to establish to provide for proper retention of public records. Please feel free to call me if you have further questions.

Sincerely,

Joseph M. Centorino
Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
305-579-2594

From: Ethics (COE)
Sent: Friday, December 27, 2013 3:30 PM
To: Dratler, Thomas (ITD)
Subject: RE: opinion request pertaining to public records rules

Mr. Dratler,
Thanks for your inquiry. We are a bit short-handed at the moment, but I will be responding to your email soon.
Joe Centorino

From: Dratler, Thomas (ITD)
Sent: Thursday, December 26, 2013 12:05 PM
To: Ethics (COE)
Subject: opinion request pertaining to public records rules

Now that I've completed the latest ethics refresher I find it necessary to request an opinion regarding an aspect of public records rules. During the ethics class, it was stated (and I'm paraphrasing, possibly incorrectly) that a significant document that is passed from one hand to another (e.g.; a document that is emailed to a supervisor for review) becomes a public record and subject to retention and disclosure rules.

Here are the scenarios that concern me:

1. An inspector conducts a routine field inspection of a permitted facility. In the field, the inspection results are informally recorded in a hand written journal. Upon returning to his office, the inspector formally creates an inspection report by entering his findings into an Excel spreadsheet that has been formatted to record inspection results. Upon completion, the Excel spreadsheet is deposited in a shared folder for review. His supervisor reviews the results, makes corrections and/or notifies the inspector to make changes/corrections to the inspection report. When the supervisor is satisfied, the inspection is deposited into another folder from which the EDMS staff inserts the completed report into an EDMS system for public records inquiries and an automated system extracts data from the spreadsheet that is inserted into an operational system database.

At what point in this process is the does the record of the inspection become a public record? For many years, it has been policy that until the report receives a final approval by a supervisor, the report is considered a work in progress and not a public record.

2. Assuming the same business process as described above, if the inspector enters his inspection results directly into a computer system and the inspection record is subject to supervisor oversight and revision during a review process, at what point in the process is the data considered a public record subject to retention? (In other words, must the system keep a record of each submittal or change made to the inspection record in order to preserve a history of modifications? This question is hypothetical, but your answer will be relevant as requirements are being gathered for new systems that will handle inspections on a County-wide basis.)

Regards,

Tom Dratler, Senior Systems Analyst

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