

PUBLIC RECORDS ACT BEST PRACTICES FOR INCUMBENTS

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When a Council Member decides to run for re-election, unlike their initial campaign for office, the impact of the Public Records Act (“Act”) must be considered as dual hats are being worn – one as candidate and one as elected official. The Act defines “public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the 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 any agency.” Agency is defined to be inclusive of a municipal officer. There is no case law or Attorney General Opinions that specifically discuss the Act in relation to an incumbent running for re-election. However, with the amount of litigation and attention that the Act otherwise generates, it may only be a matter of time before an allegation involving an elected official running for re-election arises. The purpose of this document is to provide guidance as to how to navigate these dual roles so as not to trigger a violation of the Act.

Best practices:

1. Generally. Keep in mind the definition of a public record. If the document’s primary purpose is campaign related and was not made “in connection with the transaction of official business” and is not intended to perpetuate, communicate, or formalize knowledge of some type, then it would not be considered a public record. Since campaign materials such as flyers and websites are typically marked with something like “Political advertisement paid for and approved by (name of candidate), (party affiliation) for (office sought)”, the primary purpose of many types of documents will be readily apparent. It is also worth noting that while campaign materials can, and often do, contain position statements, you should avoid taking a position on a quasi-judicial matter that is likely to come before you as it could result in you having to recuse yourself to avoid a due process claim.

2. Website.

- a. If a campaign website is established, maintained, and operated by someone other than you, on your behalf, any documents or information posted thereon would not be deemed a public record.
- b. If you personally establish, maintain, and/or operate a campaign website, any documents or information posted thereon would not be considered a public record unless made in connection with the transaction of official business.

However, you should consider retaining all content for a few months after the election as a precaution.

3. E-mails.

- a. If a campaign e-mail address is established, maintained, and operated by someone other than you, on your behalf, any documents sent or received by that e-mail address would not be considered a public record.
- b. If you personally establish and/or operate a campaign or personal e-mail address, any documents sent or received by that e-mail address would not be considered a public record unless made in connection with the transaction of official business. However, you should consider retaining all e-mails sent or received by that address for a few months after the election as a precaution. The case of *Butler v. City of Hallandale*, 68 So. 3d 278 (Fla. 4th DCA 2018) illustrates how a court would likely analyze a public records claim involving the e-mails of an elected official running for re-election. In that case, the Fourth District Court of Appeal considered whether a list of recipients of a personal e-mail sent by the Hallandale Beach Mayor containing three articles she wrote was a public record. The court determined that the recipient list was not a public record as the e-mail was not connected to official business and was not intended to perpetuate, communicate, or formalize City business. With this in mind, to the extent you inadvertently send or receive an e-mail that you believe qualifies as a public record on your campaign or personal e-mail address, forward it to your City e-mail address for retention. Conversely, do not use your city e-mail address for anything campaign related.

4. Social Media.

- a. If any social media platforms are utilized by someone other than you, on your behalf, for your campaign then any information on that platform would not be considered a public record.
- b. If you personally use any social media platform for your campaign, any information on that platform would not be considered a public record unless made in connection with the transaction of official business. However, you should consider retaining all social media accounts for a few months after the election as a precaution.

Please do not hesitate to contact the City Attorney's Office with any questions on this subject you may have.