

Monroe A. Miller Jr.  
2200 Camp Branch Road  
Waynesville, NC 28786  
May 5, 2018

**Subject:** New Updated Public Records Request Policy, Chip, a.k.a. Leon Killian III finally gets it right.

Commissioners **James Weaver “Kirk” Kirkpatrick III, Michael T. Sorrels, Kevin Ensley** and county lawyer **Chip, a.k.a. Leon Killian III** averted a near disaster of having all manner of state officials crawling up their [expletive deleted]’s by reversing their last attempt at killing Public Records Requests at their March 19<sup>th</sup> County Commission meeting by installing **Joel Mashburn**, Interim County Manager, as a Gatekeeper.

The New and Improved Public Records Request Policy to be presented by **Chip, a.k.a. Leon Killian III** and approved by commissioners at the May 7<sup>th</sup> county commission meeting removes **Joel Mashburn** as a Gatekeeper, and provides a direct path to request public information directly from the Custodians of that public information.

This is the link to the updated Public Records Request Policy approved at the 3/19/2018 ,meeting  
<http://haywoodnc.net/downloads/commissioners/agmin2018/0319/a6%200319.pdf>

and, This is the link to the updated Public Records Request Policy to be approved at the 5/7/2018 ,meeting,  
<http://haywoodnc.net/downloads/commissioners/agmin2018/0507/a18%200507.pdf>

There are three significant changes from the 3/19/2018 version to the 5/7/2018 version, and they are highlighted here. The new version is highlighted in **yellow**, and the old version text has a ~~strike-out~~.

## OLD

### **II. Requesting Copies of Public Records**

~~In order to effectively track requests, all requests for copies of public records must be made in writing and presented to the Haywood County Manager, either by mail, fax, email or hand delivery.~~

## NEW

### **II. Requesting Copies of Public Records**

**All requests for copies of public records should be presented to the custodian of the records by mail, phone, email, fax or in person. If unsure of the custodian of the requested record, requests may be sent to: ...**

## OLD

~~Requests by phone will not be accepted.~~

~~When making a written records request, please include the following information:~~

- ~~1. Your name;~~
2. The date of request;
- ~~3. Your full mailing address, telephone number and email address (if applicable);~~
4. A description of the record(s) you are requesting; and
5. The title and date of the record requested, if known.

## NEW

When making a records request, the following information is needed:

1. The date of the request;
2. A description of the record(s) you are requesting, and
3. The title and date of the record requested, if known;
4. Where the record is to be sent.

## OLD

### III. Responding to Requests for Copies of Public Records.

The custodian of the records or the Haywood County Manager will make an initial response to the request for public records within three (3) business days of receiving the request. The initial response will include a request for any clarifying information needed, cost estimates for providing records if known and an estimated availability time for the records requested. Depending on the nature and size of the request, the County may request a deposit before proceeding with the request. See Section V. Below for more details.

Response time for a public records request may vary from a few minutes to several hours or business days depending on the nature of the request. Factors that may affect the response time include:

- If the request involves accessing multiple documents or the documents that are more than six months old, or gathering information from more than one person.
- If the request affects the ability of staff members to carry out their regular responsibilities.

## NEW

The custodian of the records will acknowledge the request for public records within three (3) business days of receiving the request. Subsequently, the custodian shall within a reasonable amount of time, provide cost estimates for providing records if known and an estimated availability time for the records requested. Depending on the nature and size of the request, the County may request a deposit before proceeding with the request. See Section V. Below for more details. Providing a public record may vary from a few minutes to several hours or business days depending on the nature of the request.

Now, wasn't that easy!

Otherwise, County Commissioners were facing the prospect of an Injunction, Declaratory Relief, a Lawsuit, or having a visit by a Superior Court Judge or Josh Stein, Attorney General of North Carolina. Smart move, guys.

Both versions of these new and improved are appended to this piece, the NEW version, followed by the OLD version.

[**Editors Note:** New Policy. Since inception, I have highlighted certain names in **bold** in my newsletter, Haywood County Toeprints. This technique calls a reader's attention to certain people, and I now plan on carrying forward this idea to articles posted under Interesting Stuff on [www.haywoodtp.net](http://www.haywoodtp.net).]

Legend: If any name is in **bold**, it can't be a good thing.

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[www.haywoodtp.net](http://www.haywoodtp.net)  
*Si vis pacem, para bellum*

NEW



MAY 4 2018

## Public Records Requests Policy

Haywood County Government will make available for public inspection any documentary materials made or received by the Board of County Commissioners and/or the various agencies and departments associated with County government, as outlined in North Carolina General Statute 132: Public Records.

Following are some general guidelines to assist you in making a public records request:

### I. Inspecting Public Records in Person

1. Citizens have the right to inspect or examine public records in person during normal business hours, which typically are 8 a.m. to 5 p.m. Monday-Friday.
2. The public official in charge of each agency or department of County government serves as the custodian of public records generated in the course of carrying out the responsibilities of that office. In general, all public records are kept in the buildings in which they are ordinarily used. In most cases, the County Manager will serve as the custodian of public records generated by or presented to the Board of County Commissioners.
3. The law does not require the County to create records or compile a record that does not exist, only to provide access to records that do exist.
4. As a custodian of public records, the official in charge of an agency or department of County government may appoint a staff member to provide assistance and/or reasonable supervision during an inspection of public records.
5. Haywood County employees will make every effort to respond to requests to inspect public records in a timely manner. However, public records law does not require employees to stop current activities to accommodate requests for information. Therefore, it may not be possible to access the records requested while a person waits.
6. Any appointment to inspect records is limited to no more than a two (2) hour appointment on any given day, unless otherwise mutually agreed upon between the requestor and the County. Records that have been pulled for inspection will be made available to the requestor for a period of no more than 14 calendar days. If the requestor fails to contact the County within 14 calendar days of being notified that the records are available for inspection: (1) the records will be returned to the originating department; and (2) the requestor will need to submit a new request for the records and the process will begin anew.

### II. Requesting Copies of Public Records

All requests for copies of public records should be presented to the custodian of the records either by mail, phone, email, fax or in person. If unsure of the custodian of the requested record, requests may be sent to:

Haywood County Manager's Office, 215 N. Main St. Waynesville, NC 28786;  
Phone: 828-452-6625; Email: [publicrecords@haywoodcountync.gov](mailto:publicrecords@haywoodcountync.gov) or Fax: (828) 452-6715. The request will then be forwarded to the custodian of that record.

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When making a records request, the following information is needed:

1. The date of the request;
2. A description of the record(s) you are requesting; and
3. The title and date of the record requested, if known.
4. Where the record is to be sent.

### **III. Responding to Requests for Copies of Public Records**

The custodian of the records will acknowledge the request for public records within three (3) business days of receiving the request. Subsequently, the custodian shall within a reasonable amount of time, provide cost estimates for providing records if known and an estimated availability time for the records requested. Depending on the nature and size of the request, the County may request a deposit before proceeding with the request. See Section V. below for more details. Providing a public record may vary from a few minutes to several hours or business days depending on the nature of the request.

A Public Records Request is not continuing in nature. In the event additional records are created after the date of the requestor's original Public Records Request, the requestor must submit a new request.

In some circumstances, a request for public records may be denied for reasons outlined in NC General Statute 132. In such situations, the custodian of the records or the Haywood County Manager will provide an explanation in writing as to why the request was denied.

Requests for public information which do not identify actual records or documents are not included within the definition of "public records."

A discussion or request for an explanation is not included within the definition of "public records."

### **IV. Duplication and Transmission Fees**

Prior to the release of copies of any public record, the County will collect duplication fees.

Several County departments have a schedule of fees approved by the Board of County Commissioners and/or a particular agency of state government that addresses costs associated with public records generated by their particular office. In such cases, the approved schedule of fees will be used instead of the fees outlined below.

## Public Records Requests Policy

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Unless otherwise covered by an existing schedule of fees, the costs associated with reproducing a public record will be as follows:

- Copies of documents - \$.08 per duplicated page
- Storage of reproduced documents (on CD or DVD) - \$.25 per disc. Flash drive storage may be available at a cost of \$5-\$10, depending on storage size needed
- E-mail attachment (of ten megabytes or less) - No Cost

Copies of public records that are not otherwise collected or available in pre-printed form and that require an extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, may be considered a special service and subject to a special service charge in addition to the actual cost of duplication. The special service charge, if applicable, shall be \$18.00/hour. This rate approximates the hourly rate of pay plus fringe benefits for the position of Administrative Assistant in the County's pay schedule. Charges under this provision shall be imposed for every 6 minute increment or fraction thereof, but shall not relate back to the first 10 minutes (i.e.: \$2.15/6 minutes).

A fee of \$1.25 shall be charged for mailing copies of public records to any person, firm or corporation, unless the cost of postage exceeds \$1.00 in which case the fee for mailing shall be the actual postage plus \$1.22. The mailing fee shall be in addition to any other copying fee provided for herein.

The County acquires, develops, maintains, and uses Geographic Information System (GIS) databases in support of its internal business functions and the public services it provides. All GIS databases are provided "as is" with no warranty. All available GIS databases will be listed on the County's GIS website. GIS data is treated as a qualified exception under the Public Records law in Chapter 132-10.

The County will provide GIS data at reasonable cost, and may require the entity obtaining a copy of the data to agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. GIS data is provided in either ESRI shapefile or geodatabase format.

No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The County may assess an additional fee where copies of original records must be made prior to being sent electronically.

**Public Records Request Policy**

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**V. Deposit for Duplication:**

In the event that it is estimated that the duplication or transmission fees applicable to a particular records request exceed \$25.00, the County, at its discretion, may require the requestor to deposit a sum equal to 75 percent of the estimated cost prior to duplication of the records.

In the event that a deposit is required, the County will notify the requestor of the necessity of the deposit. In the event that the actual duplication and deposit fees are less than the amount deposited by the requestor, the County will return the sum in excess of the actual amount to the requestor.

**VI. Payment of Required Fees**

Payment of duplication and delivery fees must be made prior to the release of public documents. If the County department that maintains the public records requested is already set up to handle financial transactions, then payment may be made directly to that department. All other payments must be made in cash, money order, or check payable to Haywood County Finance Office.

Payments may be made in person to the Haywood County Finance Office, 4<sup>th</sup> Floor, Haywood County Courthouse, 215 N. Main Street, Waynesville, NC 28786. A copy of the public records request must be submitted with payment.

**VII. Failure to Pay Required Fees:**

In the event a requestor fails to pay a bill for fees incurred within 30 calendar days, the County will require the requestor to pay in full the past due amount owed before it will begin processing a new request or a pending request from the delinquent requestor.

In addition, the County may require advance payment for any future requests of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requestor.

If the County is unable to collect the duplication fees from the requestor, the County may, upon providing thirty (30) calendar days prior written notice to the requestor, destroy the duplication set of records made available for the requestor in order to avoid storage concerns. Although the records are destroyed, the requestor will still be made responsible for the costs the County incurred in duplicating the records originally requested by the requestor.

## **Public Records Request Policy**

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### **VIII. What are Public Records?**

Generally, public records include documentary materials that government agencies are required by law to make or collect; materials written or made by private people or companies and submitted to the government; and materials that government agencies make or collect at their discretion in carrying on government business.

Examples include both paper and electronic documents, emails, letters, maps, books, photographs, videos, sound recordings, magnetic or other tapes, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics.

Please note that requests for analysis, reports or any reference material that does not exist at the time of the request is not considered a public record.

### **IX. What Documents are Not Considered Public Records?**

There are several types of documents that are not considered public records. These include most personnel records (except as described in NCGS 153A-98); confidential communications by legal counsel to a public board or agency; most criminal investigation records; Juvenile records; letters from lawyers to board members about litigation; business trade secrets; tax records that show income or receipts; most medical records; minutes of closed sessions until released; public enterprise billing information; Anti-terrorism plans, public security plans, and plans and drawings for public buildings and infrastructure; Social Security numbers and other personal identifying information (mainly bank account numbers and bank card account numbers); and most information about minors participating in recreation programs.

If you have questions about public records or don't know which County office is custodian of the records you are requesting, please contact the Haywood County Manager's Office by calling (828) 452-6625 or contact us by email to [publicrecords@haywoodcountync.gov](mailto:publicrecords@haywoodcountync.gov); by mail at 215 N. Main Street, Waynesville, NC 28786; or Fax: (828) 452-6715.

(Adopted 09-07-10)

(Revised and approved – 03-19-18; 05-07-18)

OLD



MAR 17 2018

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#### II. Requesting Copies of Public Records

~~In order to effectively track requests, all requests for copies of public records must be made in writing and presented to the Haywood County Manager either by mail, fax, email or hand delivery. Information for these delivery methods is as follows:~~

**Mailing Address:** Haywood County Manager; Haywood County Courthouse;  
215 N. Main Street; Waynesville, NC 28786

**Delivery address:** County Administrative Offices; Third Floor, Haywood County Courthouse, 215 N. Main Street; Waynesville, NC 28786

Email: publicrecords@haywoodnc.net Fax: (828) 452-6715



**Public Records Requests Policy**  
**Page 2**

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1. Your name;
2. The date of the request;
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The custodian of the records or the Haywood County Manager will make an initial response to the request for public records within three (3) business days of receiving the request. The initial response will include a request for any clarifying information needed, cost estimates for providing records if known and an estimated availability time for the records requested. Depending on the nature and size of the request, the County may request a deposit before proceeding with the request. See Section V. below for more details.

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(Adopted 09-07-10)  
(Revised and approved – 03-19-18)