

THE NEW PUBLIC RECORDS LAW: TOP TEN PRACTICAL AND POLICY ISSUES

The new Public Records Law will take effect on January 1, 2017. What will it take to be ready? Here is a list of the top ten practical and policy issues you need to consider now in preparation for implementing the new law.

1. Who should serve as the **Records Access Officer** (“RAO”)? Is the default appropriate in a particular municipality? For an agency, what makes sense? Should this decision be based upon personality, position, and/or other considerations?
2. Will there be **more than one RAO**, and how will that decision be made? What are the implications for having more than one RAO? What factors are important in making that decision— familiarity with the type and scope of records held by a particular custodian, governance issues, content of records, confidentiality of records?
3. If you chose to have more than one RAO, will one be a “**Super-RAO**”, in charge of all other RAOs? Does this depend on whether a municipality has a charter, a representative form of government or otherwise? Does it depend on the size of the municipality? In an agency, what factors might suggest appointment of one Super-RAO – relative allocation of resources, by function, by size?
4. Who is the **appointing authority** for the RAO? Does that impact the relationship between the RAO and records custodians? If not, how will that relationship be regulated? How will you know what steps to take to address this, and what are the stakes if custodians are not “cooperative”?
5. Will the RAO **coordinate all responses** to requests for public records? If so, will this be a full-time or part-time job? Will a new person be hired or will the responsibilities be added to existing responsibilities? Are there bargaining implications if the position appointed as an RAO is covered by a collective bargaining agreement? What are the implications under the law for making salary changes to reflect additional responsibilities?

6. What is the **electronic records keeping/website posting policy** currently? What are the organization's current abilities and possible capabilities with respect thereto, including but not limited to staffing, IT resources and infrastructure, and financial resources? What are the implications for failing to invest in these capabilities, both technological and otherwise, now?

7. Under what conditions will **exemptions** be asserted to withhold or redact records? What are the implications, from various perspectives, for withholding or redacting records - the amount of time required to respond fully consistent with law, the financial burdens, and overall risk - as compared to the risk of simply disclosing a record in its entirety? How does this look from an overall organizational perspective, from a departmental perspective?

8. How will a realistic set of **internal guidelines** be developed for addressing public records issues, and what will that look like? Will it be a "public records policy" for all departments, for some departments? Will the "policy" address the respective roles of records custodians and the RAO(s), with respect to both requests and responses, and take into account the work that must be done within the first 10 business days following receipt of a request? Who will be responsible for, and have authority to, adopt this policy?

9. Who will develop public records request tracking **forms, checklists and standardized response letters**? Will using standardized materials ensure that requests and responses are easier to track?

10. Will typical "**over the counter**" requests and responses thereto be addressed, monitored, tracked? What will be the appropriate mechanisms to do so?

If you have any questions regarding the Public Records Law, contact Attorney Lauren Goldberg at 617.556.0007 or lgoldberg@k-plaw.com. Please visit our website at www.k-plaw.com for information concerning topical issues of importance to municipalities and other public sector entities.

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