MEMORANDUM

Date: June 24, 2016

To: The Honorable Chair and Members   From: C.H. Huckelberry
        Pima County Board of Supervisors   County Administrator

Re: **Issues Related to Recent Public Records Requests**

At the June 21, 2016 Board of Supervisors meeting, the Board discussed various issues related to recent public records requests regarding Supervisor Ally Miller and a now former member of her staff. I indicated I would highlight observed issues that require clarification of policies or procedures or amendments or additions to policies or procedures.

Introduction

For many years, public records requests were received and fulfilled by individual departments with no interdepartmental coordination. The advancement of technology and the creation of department record silos led to sporadic, sometimes incomplete, responses and in a few instances, delayed responses. In August 2014, the Clerk of the Board, Information Technology, Communications and the County Attorney drafted an administrative procedure to address the centralized processing of public records requests.

On October 24, 2014, I circulated a draft procedure to all Elected Officials, County departments and the media for review and comment. In addition to the comments received internally, written comments were received from The University of Arizona School of Journalism, the Arizona Daily Star and The Daily Territorial. Infrastructure to accommodate the workflow for the procedure was developed, and the process culminated in Administrative Procedure 4-4, Public Record Requests and Cost Recovery for the Release of Public Data, which was issued on June 9, 2015. The workflow for the process was further tightened and the procedure amended and reissued on November 2, 2015. Since assuming responsibility for the process, the Clerk of the Board has successfully coordinated responses to over 375 public records requests.

To date, the only public records requests we have had any difficulty with have been the latest series of public records requests regarding Supervisor Miller's emails and related documents beginning on May 18, 2016 relating to the Arizona Daily Herald and her then employee, Mr. Timothy DesJarlais. This matter has resulted in 15 public records requests. Prior to the latest series of requests regarding these matters, there has not been a single incident of complaint regarding fulfillment of a public records request appropriately filed in accordance with the procedure established by the County.

Public Records Requests Related to Elected Officials

Of all the County's policies dealing with compliance and sanctions related to noncompliance for public records requests governing employees, department or agencies of the County, there are few, if any, policies or procedures expressly written to require Elected Official compliance. It is generally assumed Elected Officials would follow, or at least voluntarily comply, with the same rules, policies and procedures with which all other County employees, departments and agencies are required to comply. In addition, many of our policies are not coded with keywords associated with the evolving and rapidly expanding electronic data management systems now commonly used in conducting County business. It is these two subject areas that require further elaboration and policy/procedure development.

Specific Issues that have Arisen Due to the Most Recent Series of Public Records Requests

1. Timeliness of Response – Timeliness in responding to public records requests appears to be an issue that requires clarification. Statute governing public records (ARS 39-102) simply says the records are to be *"open to inspection to any person at all times during business hours;"* and *"any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours"* (39-12101)D(1). It further states the custodian of such records shall promptly furnish the copies.

   Appropriate standards of practice should provide for simple acknowledgment of a request, notification to the party responsible to produce the records, and the appropriate arrangement for the requestor to inspect the records during normal business hours. It would seem this could easily be arranged within a matter of days, not weeks, and that record production and transmittal should occur promptly.

   Timeliness of a response for public records will instill confidence that the records are being protected and not modified, altered or deleted.

   Proposed Action – Amend and modify the public records procedure to include deadlines for responding to public records requests. In addition, procure electronic redaction software and utilize same within the Clerk of the Board's Office with the Clerk performing required redaction when a request relates to the Board of Supervisors. It is likely this responsibility will require additional staff resources for the Clerk of the Board. Also, Administrative Procedure 4-4, Public Record Requests and Cost Recovery for the Release of Public Data, should be clarified such that it is the sole decision of the Clerk of the Board as to the timing of the release of public records; not the decision of the department, agency, Elected Official or employee that may be the subject of a public records request.

2. <u>Independent and Direct Access to Requested Records</u> – In this era of electronic mail, backup and storage of electronic communications, it is important to understand there are systems in place to ensure independent verification of data. Communications through emails and other public documents, whether they be electronic mail message, text message, or written communications should be easily available.   The Information Technology Department (ITD) has both direct and independent access to certain records that may become part of a public records request, and they have the ability to quickly provide documents related to an managed in the County email system. For other records, they require the cooperation of the office, department or individual who is the subject of the request.

   In this particular case, it appears there was a delay in obtaining access to electronic devices that were believed to contain the requested public records. A timeline for processing the May 18, 2016 request indicates that other than the disclosure of records from County email accounts, no other data gathering occurred until June 6, 2016. This delay is attributed partly to internal communications within ITD, communication between ITD and the Clerk of the Board, and delay in physical access to the computer in Supervisor Miller's Office. All data was collected, compiled and completed by June 8, 2016 (see attached June 15, 2016 memorandum from Chief Information Office Jesse Rodriguez to the County Administrator).

   <u>Proposed Action</u> – Modify and amend related policies to require immediate access to and collection of all electronic data to which the public record request applies. For County emails, access can be obtained immediately. Access to County electronic devices and computers should occur within 48 hours of receipt of a request.

3. <u>Redaction</u> – Issues regarding redaction fall into two categories. First, the information permitted by law to be redacted should be defined. Redacting certain information that is required to be kept confidential by law is simple and straightforward. This would include social security numbers, confidentiality requirements, eligible persons as defined by ARS 39-123, and protected health information of a particular person or employee, and any information protected by Attorney-Client Privilege. Redaction should not be used to remove anything other than this specific information and should not be used to alter the content or omit content from a public record. It could be argued that we have a tendency to over redact to protect private email addresses and telephone numbers. I would suggest that any member of the public contacting the County and interacting on public County business would not be specifically protected by redaction.

   Any public employee or Elected Official who is the subject of a public records request should not be the party responsible for redaction, as such would constitute a conflict of interest.   General public records requests for agency or departmental records can continue to be processed as they are today.

Proposed Action – All redaction for all members of the Board of Supervisors or a specific employee or specific Elected Official should be performed by the Clerk of the Board using redaction software. Given all of the public records requests filed to date – many of which are for routine information – and that the departments and agencies have performed the redaction without complaint from requestors, they should continue to do so with supervision and approval of such redaction by the Clerk of the Board.

4. Access to Public Records on Private Computers, Telephones or other Electronic Devices – Business conducted within the scope and duties of a public official or an employee and paid for with public funds is a public record; regardless of the medium, device or instrument used to conduct such business. Public business conducted through electronic mail, text messages, telephones, written correspondence or any other form or data by a public official or public employee paid by the public is a public record. To date, unlike for employees of the County, there are no Countywide written policies that prevent Elected Officials from using private devices to conduct public business.

Public employees, which are any employee of the County paid with public funds, are prohibited from using private electronic devices or email accounts for conducting public business.   Electronic Mail (Email) Governance Administrative Procedure 25-7 (III (E)(F)) states:
> *"Participants shall access their Pima County email only through authorized County devices and other connections as determined by the County Administrator."*
>
> *"Official Pima County business shall not be conducted from a Participant's private (non-County sponsored) email system. An email sent from a personal electronic mail account by a Participant conducting official Pima County business is in violation of this procedure and creates a record that is subject to public records laws."*

Proposed Action – Any County employee who violates County procedure or policy is subject to discipline as described in the Merit System Rules, and/or Personnel Policies. The following should occur: 1) amend applicable policies and procedures to clearly prohibit the use of personal electronic devices for any activity that would become a public record for employees, as well as Elected Officials; 2) amend Workplace Ethics, Conduct and Compliance Board Policy C2.1 to prohibit the use of personal electronic devices for any activity that would become a public record; 3) amend Personnel Policy 8-119 to prohibit of use of personal electronic devices for any activity that would become a public record; 4) add a new Paragraph 20 to Pima County Merit System Rule Disciplinary and Other Personnel Actions 12.1 General Provisions (C) that states "*20. Using private electronic devices on systems such as private email accounts or other private*

communication devices to avoid the disclosure of public records as defined by the Arizona Public Records laws;" and 5) have all Elected Officials agree or reaffirm they will abide by adopted County policies, rules and codes related to public records compliance.

5. Verification and Certification of Public Records Discovered on Private Computers, Telephones and Devices – If public records exist on private computers, telephones or other electronic devices, obtaining independent verification that the records have been properly preserved and completely disclosed is a matter subject to debate and difficult to verify.

   Proposed Action – Require a review by the County Attorney to determine a procedure for compliance verification and penalty for noncompliance.

6. Cost for Production of Public Records – This issue arose when a per-page fee was charged to the requestor when the requestor requested the records in electronic format. Given modern information management systems, it is clearly appropriate to provide requested public records electronically at little to no cost. It must be made clear the per-page copy charge will only be assessed when the requestor desires a paper copy of a public record.

   Proposed Action – Add a new section to Public Record Requests and Cost Recovery for the Release of Public Data Administrative Procedure 4-4 Section V. Cost recovery that states, *"if the requestor receives the requested documents, data, or material in electronic form, there will be no cost associated with noncommercial public records requests."* In addition, add a section to the Pima County Public Records Request Form that provides the requestor various options for receiving the requested documents and the costs associated with each option.

7. Access to Electronic Footprints on Public Computers and Electronic Devices – More recent public records requests, even before those received relative to Supervisor Miller, requested information regarding meta data, browser activity and other related electronic information terminology. These electronic footprints can also be used to collaborate the authenticity of the electronic mail or message.

   Below are a series of information technology terms that require definition and expansion in any public records policy amended to ensure full and complete disclosure of public records and the authenticity of the records released, as well as to confirm the possible intent of electronic communications and confirm the content or inclusion of electronic mail or message:

   A. Meta data: Meta data is basically the information about the file itself. This is where the time stamps are registered, the name of the file itself, the type of

file it is, and where the file attributes live. Meta data shows whether the original content of the file was altered before being released.

Example of how meta data might change: if someone sends a Word document and the recipients make a change to the document and then saves it, the date and time stamp will change, indicating the meta data has been altered. Meta data has value in looking at and for unaltered data.

B. Browser: A web browser (commonly referred to as a browser) is a software application for retrieving, presenting, and traversing information resources on the World Wide Web. An information resource is identified by a Uniform Resource Identifier (URI/URL) and may be a web page, image, video or other piece of content. Hyperlinks present in resources enable users easily to navigate their browsers to related resources. Although browsers are primarily intended to use the World Wide Web, they can also be used to access information provided by web servers in private networks or files in file systems.

C. Browsing History: Browsing history is comprised of a record of Web pages visited in past browsing sessions and typically includes the name of the Web page/site, as well as its corresponding URL. This log is stored by the browser on a device's local hard drive and can be utilized for a number of purposes, which include providing "on-the-fly" suggestions as a URL is typed or website name into the address bar.

D. Cache: A web cache (or HTTP cache) is an information technology term for the temporary storage (caching) of web documents, such as HTML pages and images, to reduce bandwidth usage, server load, and perceived lag. A web cache system stores copies of documents passing through it. Subsequent requests may be satisfied from the cache if certain conditions are met. A web cache system can refer either to an appliance or to a computer program.

E. Cookie: An HTTP cookie (also called web cookie, Internet cookie, browser cookie or simply cookie) is a small piece of data sent from a website and stored in the user's web browser while the user is browsing. Cookies were designed to be a reliable mechanism for websites to remember information (such as items added in the shopping cart in an online store) or to record the user's browsing activity (including clicking particular buttons, logging in, or recording which pages were visited in the past). They can also be used to remember arbitrary pieces of information that the user previously entered into form fields such as names, addresses, passwords, and credit card numbers.

    F. Text Message: Text messaging, or texting, is the act of composing and sending electronic messages between two or more mobile phones, or fixed or portable devices over a phone network. The term originally referred to messages sent using the Short Message Service (SMS). It has grown to include multimedia messages (known as MMS) containing images, videos, and sound content, as well as ideograms known as emoji.

    G. Instant Messaging: Instant messaging (IM) is a type of online chat which offers real-time text transmission over the Internet. A LAN messenger operates in a similar way over a local area network. Short messages are typically transmitted bi-directionally between two parties, when each user chooses to complete a thought and select "send". It is usually possible to save a text conversation for later reference. Instant messages are often logged in a local message history, making it similar to the persistent nature of emails.

    H. Social Media: forms of electronic communication (such as Web sites for social networking and microblogging) where users create online communities to share information, ideas, personal messages, and other content, such as videos.

Media Review

As requested by the Board, I have asked the recognized and independent media outlets (the Arizona Daily Star, Tucson Weekly and Tucson Sentinel) that made public records requests relative to the matters regarding Supervisor Miller, Mr. DesJarlais, and the Arizona Daily Herald, and which have the greatest degree of concern, to review this memorandum and the suggested modifications to County policies, procedures and ordinances. A follow-up meeting with these media outlets, the Clerk of the Board, and myself will be conducted to discuss any suggestions they may have related to complete and timely release/examination of requested public records.

CHH/anc

Attachment

c: Thomas Weaver, Chief Civil Deputy County Attorney
      Robin Brigode, Clerk of the Board of Supervisors

Date: June 15, 2016

To: Chuck Huckelberry
      County Administrator

From: Jesse Rodriguez
        Chief Information Officer

Re: Public Records Request Related to Timothy DesJarlais and the Arizona Daily Herald

Per your request, enclosed you will find the timeline for ITD to respond to a request from the Clerk of the Board to conduct a forensic survey of information contained in Supervisor Miller's Pima County office computers. This proved to be a difficult task as ITD doesn't possess forensic tools to gather this type of information. However, ITD tried to acquire the information using some PowerShell scripts and a couple of different trial software packages. The software used was not as fully functional as we needed and staff ran into some difficulties as they are not really trained on this type of forensic data collection. Additionally, ITD has limited personnel to carry out these types of requests, which makes it difficult to balance these type of complex requests with keeping the County's information systems running.

With that said, I believe you will find the provided timeline accurate and consistent. Please note that in the timeline there is a time gap on rows 7 and 8 (May 27th.) This is due to ITD waiting for an official request from the Clerk of the Board to continue with the request which had been put on hold.

The requestor wants to know why all the emails weren't included as part of the request. I don't believe there is enough information to provide an accurate response to this question, but based on what we do know it is clear that if Supervisor Miller has, in fact, 7000 – 8000 pages of email, it doesn't necessarily mean the requestor would receive these messages. ITD does searches based on keywords provided by the Clerk of the Board, my assumption is that his request was limited in scope and produced a smaller number of documents than he believed he should receive. Supervisor Miller also has the right to redact those emails. Also, the County has an email retention policy of 60 days. Based on the information request, my assumption is that there was an expectation of getting Supervisor Miller's email throughout the course of her tenure here at the County. Because of our retention policy, we can only run searches on the active content within her email account. It is possible that Supervisor Miller may be keeping messages in an area outside of the County's Exchange email system. We would have no way to get to these messages as we are only searching within the County's Exchange email system. An eDiscovery or forensic capable application would be needed in order to provide a broader search than we can currently do with these types of requests.

Finally, I would also like to note that this is the first time current staff have received a request to gather information related to information contained on personal computers. Our practice is to keep all information on our servers and this extended the time required to comply with the request, as we had to coordinate with Supervisor Miller's and ITD's Client Services staff to come

in to their office to conduct our search while minimizing the impact on Supervisor Millers staff's ability to get their work done.

Attachment

c: Tom Burke. Deputy County Administrator for Administration
       Robin Brigode, Clerk of the Board
       Ken Mayer, ITD Infrastructure Services Manager

Timeline

Start Date	End Date	Parties Involved	Tasks	Issues
May 18 at 1:57pm	May 18 at 5:34pm	Requester, Chief Information Officer, ITD Management Team, Clerk of the Board.	Determine if specific information in the request from Dylan Smith (Tucson Sentinel) could be complied with.	Some information within the request couldn't be ascertained without consent from staff members who would be willing to turn over their personal information.
May 18 at 5:34pm	May 18 at 5:36pm	ITD Chief Information Officer, ITD Infrastructure Manager, ITD Management.	ITD Infrastructure Manager sent a response to Chief Information Officer, identified what information could be gathered and what information couldn't be gathered.	Some information within the request couldn't be ascertained without consent from staff members who would be willing to turn over their personal information.
May 18 at 5:36pm	May 18 at 5:36pm	ITD Chief Information Officer, Infrastructure Manager, ITD Management.	ITD Infrastructure Manager gets a request from the Chief Information Officer to send his findings to the Clerk of the Board for review as to what information could be gathered and what information couldn't be gathered.	None.
May 18 at 10:16pm	May 18 at 10:16pm	ITD Infrastructure Manager, Chief Information Officer, Clerk of the Board, ITD Management.	ITD Infrastructure Manager sends an email response to Clerk of the Board with ITD's notes on what information could or couldn't be gathered based on the request from Tucson Sentinel. Request follow up or next steps.	None.
May 19 at 1:48pm	May 19 at 1:48pm	ITD Infrastructure	ITD Infrastructure Manager sends an email message to	None.

		Manager, Chief Information Officer, Clerk of the Board, IT Management.	Clerk of the Board that items 1 and 3 were completed and Items 2,4,5 and 6 were outstanding.	
May 19 at 2:22pm	May 19 at 2:22pm	ITD Infrastructure Manager, Chief Information Officer, Clerk of the Board, ITD Enterprise Application Supervisor.	ITD Infrastructure Manager receives a response from Clerk of the Board that that she won't be asking ITD for #2 through the email workflow as it is presumed that ITD would capture any incoming and/or outgoing emails from that account in #1 and/or #3. The Clerk of the Board will await an email response from ITD department on the remaining requests.	None.
May 27 at 9:33am	May 27 at 9:33am	ITD Infrastructure Manager, Clerk of the Board, ITD Enterprise Application Supervisor.	ITD received an email (RE: Emailing - Public Records Request No. 2016-97.pdf) from Clerk of the Board to process the highlighted information embedded in a PDF document.	None.
May 27 at 3:00pm	May 27 at 3:00pm	ITD Infrastructure Manager, ITD Computing Engineer, ITD Enterprise Application Supervisor.	ITD Enterprise Application Supervisor forwards request from Clerk of the Board to ITD engineer to process the request.	None.
May 27 at 3:51pm	May 27 at 3:51pm	ITD Infrastructure Manager, Computing Engineer, ITD Enterprise Application	ITD Enterprise Applications Engineer request information from the relationship management team to help identify the all-County computing	None.

		Supervisor, ITD Relationship Management.	devices in the District 1 offices.	
May 27 at 4:00pm	May 27 at 4:00pm	Clerk of the Board, ITD Management Team, ITD Infrastructure Applications Team.	Assigned browser portion of this request to Infrastructure Applications Team. Infrastructure Services discuss with the Clerk of the Board request to identify next steps.	None.
May 27 at 5:20pm	May 27 at 5:20pm	ITD Infrastructure Manager, Computing Engineer, ITD Enterprise Application Supervisor, ITD Relationship Management.	The request from ITD Applications Engineer is forwarded to the relationship manager responsible for the District 1 office.	None.
Monday, May 30, 2016	Thursday, June 2, 2016	Clerk of the Board, Infrastructure Applications Team.	Discussed process with Clerk of the Board for gathering this type of data.	None.
Monday, May 30, 2016	Thursday, June 2, 2016	ITD Infrastructure Applications Team.	Reviewed existing board policies and their impact on these types of requests.	20 days of IE history only, clear temp internet files on browser exit in IE, no hardcoded location for cookies/temp internet files, etc.
Monday, May 30, 2016	Thursday, June 2, 2016	ITD Infrastructure Applications Team.	Reviewing freeware options for gathering this type of data (Nirsoft's Browsing History View, IE History View, Chrome History View, MZ History	Old software, not supported, limitations with gathering and formatting all data, etc.

			View, Chrome CookiesView.)	
Monday, May 30, 2016	Thursday, June 2, 2016	ITD Infrastructure Applications Team.	Researching locations of each type of requested data; testing an IT generated script to pull this data.	Credential Manager encryption, Date filter issues with cookies, registry file unable to mount with profile in-use, etc.
May 31 at 8:33am	May 31 at 8:33am	ITD Infrastructure Manager, Computing Engineer, ITD Enterprise Application Supervisor, ITD Relationship Management.	ITD Enterprise Applications team received a response from the relationship manager for District 1. A list of staff members is provided.	There is no information about the computing devices for the District 1 offices.
May 31 at 1:28pm	May 31 at 1:28pm	ITD Infrastructure Manager, ITD Computing Engineer, ITD Enterprise Application Supervisor, ITD Relationship Management, IT Management, Client Services.	ITD Enterprise team sends a reply to ITD relationship manager for District 1 requesting list of the computers assigned to the District 1 staff members.	There is no information about the computing devices for the District 1 offices.
June 2 at 8:42am	June 2 at 8:42am	ITD Infrastructure Manager, ITD Computing Engineer, ITD Enterprise Application Supervisor, ITD Relationship	ITD Enterprise Team sends a reply to ITD relationship manager for District 1 requesting an update on the computer names.	None.

		Management, IT Management, ITD Client Services		
June 2 at 10:47am	June 2 at 10:47am	ITD Infrastructure Manager, Clerk of The Board, ITD Enterprise Application Supervisor	Clerk of The Board requests ITD provide an update as to the status of her request.	None.
June 2 at 10:50am	June 2 at 10:50am	ITD Infrastructure Manager, Clerk of The Board, ITD Enterprise Application Supervisor.	ITD Enterprise Team provides a response to Clerk of The Board that we are awaiting some computer information and hope to have it soon.	None.
June 2 at 11:01am	June 2 at 11:01am	ITD Infrastructure Manager, Computing Engineer, ITD Enterprise Application Supervisor, ITD Relationship Management, ITD Management, Client Services.	ITD relationship manager for District 1 requests a computer name report from SCCM System.	None.
June 3 at 7:59am	June 3 at 7:59am	ITD Infrastructure Manager, Computing Engineer, ITD Enterprise Application Supervisor, ITD Relationship Management,	ITD Client services team provides a list of District 1 computers to ITD Enterprise Applications team.	None.

		ITD Management, ITD Client Services.		
June 3, 2016	June 3, 2016	ITD Infrastructure Applications Team.	Requests Digital Detective's NetAnalyisis v2 Trial Version.	None.
June 6 at 10:50am	June 6 at 10:50am	ITD Infrastructure Manager, ITD Application Supervisor, ITD Client Services Supervisor.	ITD Infrastructure Manager requests ITD Client Services team to assist with the District 1 office. ITD Infrastructure team is advised that the ITD Infrastructure Technical Engineer will need to be escorted by the assigned District 1 ITD Client Services representative.	None.
June 6 at 11:31am	June 6 at 11:31am	ITD Infrastructure Manager, ITD Application Supervisor, ITD Client Services Supervisor.	ITD Client Services Supervisor provides contact information for ITD staff member who will assist the ITD Infrastructure Technical Engineer.	None.
June 6, 2016	June 6, 2016	Clerk of the Board, ITD Infrastructure Applications Team.	Approved for Digital Detective's NetAnalysis v2 Trial; testing; license issue.	Trial license was nullified due to accidental breach of licensing limitations (installing in a virtual environment during testing.)
June 6, 2016	June 6, 2016	ITD Infrastructure Applications Team.	Request for Foxton Forensics Browser History Examiner/Viewer/Capturer; Testing.	Remote computer limitations; only 25 results on the Examiner, which did gather everything desired.
June 6, 2016	June 6, 2016	Supervisor Miller's Office, ITD Client	Onsite data gathering,	Unable to gather mobile/iPad data. No browser links, cookies, temporary

		Services Team, ITD Infrastructure Applications Team.		files to indicate staff used computers for other than District 1 work.
June 7, 2016	June 7, 2016	Supervisor Miller's Office, ITD Client Services Team.	Onsite data gathering on remaining two devices (post BOS meeting.)	Unable to schedule until afternoon due to BOS meeting.
June 7, 2016	June 7, 2016	ITD Client Services Team, ITD Infrastructure Applications Team.	Compiling and formatting data.	Due to software limitations, data wasn't able to be formatted into a single CSV or HTML report without a large amount of manual work.
June 8, 2016	June 8, 2016	Clerk of the Board, ITD Infrastructure Applications Team.	Completed compiling and formatting data, reviewing format and instructions with Clerk of the Board, sent data to Clerk of the Board.	Clerk of the Board desire to make viewing the data easier for requester, discussed the challenges with our existing software situation.