

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Sitting/Acting as (if applicable)

Study Session Worksheet

Presentation Date: 10/16/12 **Approx Start Time:** 10:45 **Approx Length:** 15 Minutes

Presentation Title: New E-Signature and E-Discovery Policies

Department: Technology Services & County Counsel

Presenters: **Dave Cummings - Director of Technology Services**

Stephen Madkour - County Counsel

Dave DeVore - Deputy Director of Technology Services

Other Invitees:

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Approval of new County Policy for Electronic Signatures / Approvals and E-Discovery.

EXECUTIVE SUMMARY:

The County is pursuing efficiencies by implementing both paperless processes and workflow / applications that deliver electronic services to County staff and citizens. These solutions allow a greater array of services to be delivered more efficiently with less resources utilizing several business and technical solutions. A critical component of these solutions is the need to be able to accept various types of electronic signatures and approvals without resorting to physical signatures or antiquated processes that prevent full utilization of the electronic workflow process. This E-Signature policy addresses the legal aspects of accepting electronic signatures / approvals as well as setting the process for determining the appropriate type of electronic solution to fit the business and technical requirements. This policy outlines the basic types of solutions available and the process to determine the solution therefore providing a methodology to implement full electronic workflow and application solutions.

The E-Discovery policy formalizes a process that currently is in place concerning the retention and production of electronic documents either in response to public records requests or in the course of litigation.

FINANCIAL IMPLICATIONS (current year and ongoing):

Directly none. Indirectly, there will be savings in resources, paper and time realized with the increased efficiency and capabilities made possible by the development of workflow and applications utilizing electronic signatures and approvals thus saving the cost of printed signatures and time consuming approval processes.

LEGAL/POLICY REQUIREMENTS:

There are several Federal and State regulations concerning the use or electronic signatures or authorization as identified in the E-Signature policy and pertaining to Electronic discovery. All requirements have been reviewed by County Counsel.

PUBLIC/GOVERNMENTAL PARTICIPATION:

N/A

OPTIONS:

There are options:

Option 1 - Approve the E-Signature and E-Discovery Policies to provide a formal county-wide process for determining and utilizing electronic approvals and signatures, and for the production of electronic documents;

Option 2 – Reject or revise the E-Signature and E-Discovery Policies.

RECOMMENDATION:

Staff recommends the approval of the E-Signature and E-Discovery Policies as a County standard. If approved, these policies would allow the continued development of workflow and applications utilizing electronic signatures / approvals creating efficient solutions for many business requirements. If not approved, the inefficient and slow current practice of printing and physically signing documents would continue as well as preventing many online services from being developed due to the lack of any ability for electronic approvals.

ATTACHMENTS:

Draft of the proposed E-Signature and E-Discovery Policies.

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval DC/dd

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Dave DeVore @ 503-723-4996

Fiscal Impact Form

RESOURCES:

Is this item in your current work plan and budget?

- YES
 NO

START-UP EXPENSES AND STAFFING (if applicable):

N/A

ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):

Approval of policy will allow further development of workflow and applications within current resources. Further development of solutions may require additional resources depending on the technical and staffing requirements as determined by the business goals. The exact details of these potential solutions and required resources are unknown at this time.

ANTICIPATED RESULTS:

Initial fiscal impact is N/A. Long term impact is anticipated to be savings in efficiencies and resources due to workflow and applications utilizing the E-Signature policy.

COSTS & BENEFITS:

N/A

Costs:							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	Total Start-up Costs						
	Ongoing Annual Costs						
Benefits/Savings:							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	Total Start-up Benefit/Savings						
	Ongoing Annual Benefit/Savings						



Technology Services

E-Discovery Policy

POLICY:	E-Discovery
DATE:	01-01-2012
REVISION:	1.0 DD
EFFECT:	DRAFT
REVIEW:	

1. PURPOSE

Clackamas County maintains a large amount of electronic information in many forms and formats. Much of this data is confidential or sensitive and must meet strict regulatory policies as to storage, handling and distribution. This includes requests, both internal and external, for access to or copies of data for purposes other than the intended application by entities outside the managing agency. Such requests must be reviewed, processed and completed in such a manner as to ensure data security and appropriate use. This requires the coordination of multiple County departments. The purpose of this policy is to outline the process for requesting and approving such requests so that the data security is maintained and County liability limited.

2. SCOPE

This policy applies to any request for County owned / managed data for the purposes of discovery or review outside the intended utilization of the data or the managing agency. This includes data that is owned by external agencies but stored on County systems or under County stewardship. This includes any form of electronic data such as, but not limited to: Electronic files, databases, video, Email, Voice Mail, Instant messaging or texting, audio, images, logs etc. This does not apply to paper copies or microfiche—only electronic data. Examples of E-Discovery requests covered by this policy include, but are not limited to:

- Email
- Internet Logs
- CCTV Video
- Contents of File Systems
- Security Access Logs
- Network Access Logs

This policy does not cover the use of data in another application or ongoing reporting solution. Such use is covered under the Data Utilization Policy. This policy also does not apply to data that is administered by a Managing Agency as part of the normal business operations of the agency or any requests for such data that is normally available without filing a discovery request.

3. DEFINITIONS

For use in this policy, the following terminology is defined:

- **Public Records Request**
Any request from a source external to the County not involved in a legal investigation.
- **Internal E-Discovery**
Any request from a source within the County.
- **Employee Services (DES)**
Clackamas County Department of Employee Services. DES verifies requests as appropriate and where employees are involved, that all procedures are properly followed.
- **County Counsel (CC)**
Clackamas County Office of County Counsel. CC verifies requests as legal, appropriate and all procedures are properly followed. CC may also review discovery results prior to release for screening and verification of appropriate data.

- **Records Management (RM)**
Clackamas County Department of Records Management. RM processes many of the requests for data in the County and will coordinate as required with other County agencies in the processing and review of the request depending on the request specifics.
- **Technology Services (TS)**
Clackamas County Department of Technology Services. TS manages the technology, storage and in many cases, the processing of E-Discovery requests. TS ONLY processes requests in accordance with the processes defined within this policy.
- **Facilities (FAC)**
Facilities is responsible for the overall security of the County facilities and therefore is responsible for some aspects of security related E-Discovery requests. TS and FAC will coordinate together on approved E-Discovery requests to ensure the appropriate data is provided.
- **Managing Agency**
The County (or external) agency that is responsible for the data and maintaining its security. Many E-Discovery requests are made directly to the Managing Agency who will coordinate the request with the appropriate County agencies for review and approval.

4. PUBLIC RECORDS REQUEST

The following process is to be followed for Public Records Request:

- Normal requests are filed with Records Management as outlined by the instructions defined at <http://www.clackamas.us/rm/request.jsp> Some requests may also be filed directly with County Counsel, especially those involved in a legal action.
- Records Management and/or County Counsel processes the request and reviews it with the required County agencies such as DES and Managing Agencies to determine if appropriate and costs.
- Records Management and/or County Counsel coordinates with TS as required to process the request and produce discovery results. All processing requests made to TS need to be made to the Director or deputy Director of TS who will coordinate the request.
- TS may coordinate with other required departments as needed to complete the request.
- If required, results are sent to County Counsel for review to ensure no inappropriate data are included in the results.
- After review, Records Management and/or County Counsel coordinates releasing the resulting discovery results to the requesting source as well as any associated fees for the request.
- Unless otherwise instructed by County Counsel, all request are considered confidential and handled as such with all appropriate regulations regarding handling of the data enforced (such as protecting personally identifiable information etc).

5. INTERNAL E-DISCOVERY

The following process is to be followed for Internal E-Discovery Request:

- If the request is related to a work performance issue:
 - Requests are filed with the Director of DES or assigned designate.
 - DES reviews the request and determines if appropriate.
 - DES, if required, coordinates with County Counsel in the review of the request to determine if appropriate, legal, and how to proceed with the request.
 - DES and/or County Counsel coordinate with the requesting agency and TS if required to process the request and produce discovery results. All processing requests made to TS need to be made to the Director or deputy Director of TS who will coordinate the request.

- Results are sent to DES or to the requesting agency if approved by DES.
- If the request is related to a internal investigation or request:
 - Requests are filed with County Counsel or assigned designate.
 - County Counsel reviews the request and determines if appropriate.
 - County Counsel coordinates with the requesting agency and TS if required to process the request and produce discovery results. All processing requests made to TS need to be made to the Director or deputy Director of TS who will coordinate the request.
 - Results are sent to County Counsel for review.
 - Depending on the request / data specifics, County Counsel coordinates with the requesting agency as required to review the discovery results, remove inappropriate data, and determines eligible data for release.
- TS may coordinate with other required departments as needed to complete the request.
- Unless otherwise instructed by County Counsel, all request are considered confidential and handled as such with all appropriate regulations regarding handling of the data enforced (such as protecting personally identifiable information etc).

6. EXCEPTIONS

The following are exceptions to the processes defined in this policy:

- Special situations as requested and coordinated by County Counsel for investigations.
- Special situations as requested and coordinated by the District Attorney for investigations.
- As required in the process of a criminal investigation.
- Processing the contents of a no longer active staff member's PC drive and / or File System as needed by the Managing Agency.

7. RETENTION

Electronic information covered by this policy may have retention schedules that can impact the Discovery request. The following schedules are followed for the retention of the various types of electronic information:

FILE TYPE	RETENTION	NOTES
Electronic Files	Variable	Depends on retention rules for particular files
Email	10 years	Discovery is available for 10 years prior to request date
Web Logs	90 Days	Logs purged automatically after 90 days
Security Video	30 Days	Some variable, most set to 30 day over-write
Security Logs	90 Days	Logs purged after 90 days

8. QUESTIONS

For any questions related to this policy or the discovery of Electronic Data, please contact the Office of County Counsel at (503)-655-8362. For more information on Public Records Request, please go to the web site: <http://www.clackamas.us/rm/request.jsp>



Technology Services

E-Signature Policy

POLICY:	E-Signature
DATE:	10-01-2012
REVISION:	2.1 DD
EFFECT:	DRAFT
REVIEW:	ANNUAL

1. PURPOSE

The purpose of this policy is to define the types of signatures available for use and outline the process for determining the type of signature required on any given document type. As the need for Document Management, work flow and paperless systems increases in the County, the need to utilize E-Signatures where ever possible becomes important for the efficient processing of electronic documents and their business systems.

2. SCOPE

- This policy applies to any document, whether electronic or paper, owned, processed or managed by the County that requires some level of approval or authority that historically has been / or could be satisfied by a signature.
- This policy applies to both internally and externally processed documents including the use of signatures or approvals of non-County staff.
- This policy defines which documents can satisfactorily meet the requirements of a signature via some level of electronic signature, authentication, or assumed signature process.
- This policy shall not alter any retention schedules of any public records subject to this policy.

3. AUTHORITY

This policy applies to County documents under authority of the following statutes:

- *US Electronic Signatures in Global and National Commerce Act, 15 USC §7001.*
Facilitating the use of electronic records and signatures in interstate and foreign commerce by ensuring the legal enforceability of contracts entered into electronically.
- *Oregon Uniform Electronic Transaction Act, ORS 84.001 et seq.*
Establishes that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a law requires a signature, an electronic signature satisfies the law.
- *ORS 84.052*
Applies to governmental agencies and allows for the acceptance and distribution of electronic records provided the governmental agency adopts policies concerning electronic signatures, including the extent, creation, storage, process, use, and format.

4. DEFINITIONS

For use in this policy, the following terminology is defined:

- **County Counsel (CC)**
Clackamas County Office of County Counsel. CC verifies the legal requirements for a signature for a given document type.

- **Records Management (RM)**
Clackamas County Department of Records Management. RM may also verify the legal or business process requirements for a signature based on documents type.
- **Technology Services (TS)**
Clackamas County Department of Technology Services. TS may provide technical solutions to meet digital or authenticated signature requirements as well as work flow solutions.
- **Managing Agency**
The County or external agency that is the owner of or responsible for the document type or business process requiring some level of approval.
- **Internal Document**
Any document that is restricted to internal processing within the County administration or departments and the approval process requires only County staff. This does not preclude the document from being distributed externally, only the approval process must remain with County staff.
- **External Document**
Any document that at some point requires the use of non-County personnel to approve or sign the document.

5. TYPES OF SIGNATURES - INTERNAL

The following defines the types of signatures available for use with Internal Documents:

- **PHYSICAL**
The document requires a hard copy and physical signature. Even in an electronic work flow process, final approval must be physically signed for official record. Whenever possible it is recommended that the documents approval process be designed to utilize non-physical signatures until the final version is ready for printing and signing utilizing an attached signature page.
- **DIGITAL SIGNATURE**
Physical printed copy with original signature is not required; however a digital signature is required to be attached with the electronic document. Signature may be obtained in several methods depending on the requirements of the business process:
 - Signature Pad
 - Pre-scanned stored signature
 - Preapproved signature seal
 - Signature E-Certificate
 This signature type allows for full paperless workflow with a signature process built into the workflow. Printed documents would show the signature as if it was physically signed.
- **AUTHENTICATED OR ASSUMED SIGNATURE APPROVAL**
This process requires no actual signature for approval or authorization. This authenticated or assumed signature approval process requires that the document management system or workflow be accessible only after a secure authentication to the system, such as a secure network account or business system with an additional account and password. The secured access is valid authorization to approve documents without an actual signature. The data, account, or process information of the authorization representing the signature must be maintained electronically with the document.

- **HYBRID**

While not actually a different type of E-signature, the blending of the 3 types of internal E-signatures is also available as long as it can be built into the document life cycle. An example would be a document utilizing Authenticated Approvals during the development of the document and a physical signature once the document is finalized and printed. A signature page, or several initialed sections etc could be utilized as the final stage of the document process. Hybrid documents would still utilize Addendum A to define the type(s) of signatures making sure the various points in the lifecycle of the documents where the various signatures are used is well defined.

6. TYPES OF SIGNATURES - EXTERNAL

As with internal documents, there are also standards for the use of E-signatures on external documents and the required signature and approval process.

- **PHYSICAL**

The document requires a hard copy and physical signature.

- **DIGITAL CERTIFICATE**

A standard digital certificate is attached to the documents with pre-established credentials.

- **ACCOUNT**

User creates an account on a County owned or managed system for secure access.

- **EMAIL VERIFICATION**

An Email is sent or received to verify the identity of the individual user.

- **TERMS & CONDITIONS**

The user is required to acknowledge electronically the Terms & Conditions of the document or the process.

- **HYBRID**

A blending of the approved External Signature types to support the business requirements.

7. PROCESS

To determine the signature requirements of a particular document or process, the following process is recommended:

- Contact your department's Records Coordinator to determine what the legal requirements are for signatures or approvals. If you do not have a coordinator, contact Records Management directly.
- Confirm the business requirements of the document are fully understood and are part of the analysis process along with any proposed work flow processes. TS may assist in this analysis to confirm the work flow process is technically feasible.
- Your Records Coordinator will then work with County Counsel for the legal requirements and final e-signature approval.
- Once the signature requirements are defined, the Records Coordinator needs final approval from the Managing Agency's management.
- Once all approvals are obtained, the Records Coordinator or designee will coordinate with TS on any required technology or workflow modifications to meet the new signature requirements.
- TS will add the Document Type and Signature Requirements to the E-Signature Addendum and update the posting on the TS Policies Website.

8. EXCEPTIONS

The following are exceptions to the processes defined in this policy:

- Approvals or signatures requiring some type of official seal representing a professional registration, licensure, or certification are conditional exempted from this policy unless the Managing Agency has established procedures to accept and process digital signatures in a manner consistent with this policy.

9. QUESTIONS

For any questions related to this policy or the determination of required signature type, please contact the Office of County Counsel at (503) 655-8362. For more information on methods in capturing digital signatures or authenticated approval, or how to utilize e-signatures in the management of documents please contact Technology Services at (503) 655-8346 or via a Help Desk request online at <http://web1.clackamas.us/toolbox/help>

