



FLORIDA'S PUBLIC RECORD ACTS

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WHAT IS FLORIDA'S PUBLIC RECORDS LAW AND WHAT DOES IT APPLY TO?

IT IS A GUARANTEED CONSTITUTIONAL RIGHT



Art. I, Section 24 of the Florida Constitution set forth Florida's Public Records laws and states:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

- **Requests do not have to be made in writing.**
- Requests do not have to be for a special or legitimate interest.

IT IS EXTREMELY BROAD IN SCOPE



Florida Statutes § 119.011(12) defines “public records” as:

[A]ll 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.

ITEMS THAT FALL WITHIN THE DEFINITION OF A “PUBLIC RECORD”



- 1) **Records contained and stored on a computer.**
- 2) **District financial records** including budgets and working papers.
- 3) **Draft documents.**
- 4) **All documents exchanged between the District, its representatives and attorneys**, including attorney bills, unless the District is involved in pending litigation.
- 5) **Email messages.**
- 6) **Website blogs and message boards.**
- 7) **Documents contained on a password protected website link** can be a public record if they are placed there to communicate official business of the agency.
- 8) **Communications on social networking sites.**

ITEMS THAT HAVE BEEN FOUND NOT TO BE A PUBLIC RECORD



- 1) **Personal notes** when they are solely for the persons own use in remember things are not a public record. *The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 SO. 2d 185 (Fla. 1st DCA 2002).
- 2) **Private emails** stored in government computers does not automatically become a public record by virtue of that storage. *State v. City of Clearwater*, 863 So. 2d 149 (Fla. 2003).

WHAT COULD BE A PUBLIC RECORD:



- 1) **Notes** **when** they are intended to communicate, perpetuate or formalize knowledge. *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915 (Fla. 3rd DCA 2007)
- 2) Text messaging and Blackberry “pinning” - Maybe?!?!?!
Inf. Op. Att’y Gen. Fla. June 2, 2009.

WHAT IS EXEMPT FROM THE PUBLIC RECORDS?



- The Legislature has carved out limited exemptions from the Public Records law all of which are narrowly construed.
- If an exemption is applicable, it must be stated in writing and must contain the statutory citation to the exemption. Fla. Stat. § 119.071 (1)(e).

LIST OF EXEMPT RECORDS:



- Home addresses, phone numbers and photographs of firefighters, the places of employment and schools of their spouses and children – Fla. Stat. § 119.071 (4)(b)
- Personal bank account numbers and debit, charge and credit card numbers - Fla. Stat. § 119.071 (5)(b)
- Social Security Numbers - Fla. Stat. § 119.071(5)(a)5
- Work products developed by the public employer during or in preparation for collective bargaining negotiations - Fla. Stat. § 447.605(3)
- Documents exchanged between the District and its attorney when there is pending or threatened litigation – Fla. Stat. § 119.071 (1)(d)1.
- Complaints relating to discrimination, discipline, employee performance until a finding is made as to probable cause, the complaint is inactive, or the complaint is made part of a court proceeding - Fla. Stat. § 119.071 (2)(g).
- Sealed competitive bids or proposals until the agency provides either notice of a decision or within 10 days after bid opening (whichever is earlier) - Fla. Stat. § 119.071 (1)(b).

WHO DO THE PUBLIC RECORDS LAWS APPLY TO?



Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public record or the custodians designee.

Section 119.07(1)(a), Florida Statutes

WHEN DOES THE DISTRICT HAVE TO RESPOND TO A PUBLIC RECORDS REQUEST?



- The records custodian of the agency or his/her designee is responsible for making public records available for inspection and/or copying **“at any reasonable time, under reasonable conditions”**. Fla. Stat. § 119.07.
- The Public Records Act does not contain a specific time limit.

WHAT ABOUT EXCESSIVE OR OVERBROAD REQUESTS?



- Districts cannot refuse to produce records because the request is excessive or overbroad.
- Fees may be charged for copying costs and special service charges for “extensive use” of clerical or supervisory labor, or “extensive” information technology. Fla. Stat. § 119.07(4)(d).

TIPS IN RESPONDING TO PUBLIC RECORDS REQUESTS



- 1) Make sure your Records Custodian or designee is knowledgeable and trained on the requirements of Chapter 119, Florida Statutes.
- 2) Require that all officials annually receive Government in the Sunshine and Public Records law training.
- 3) Provide copies or the online link to the Office of the Attorney General's "Government-In-the Sunshine Manual" to all District officials.
- 4) Institute and implement a policy regarding the preservation of all email communications relating to District business.

TIPS IN RESPONDING TO PUBLIC RECORDS REQUESTS (cont'd)



- 5) If you have a District issued email account, then use it. Try not use your personal email account if you can avoid it!
- 6) If you are using your own personal email account, then make sure you always copy the Records Custodian on your communications.
- 7) Until record retention can be ensured, adopt a policy that prohibits the use of “texting”, “pinning”, or social networking for District business.
- 8) When in doubt about whether a communication is subject to Sunshine and Public Records laws, consult with the District’s legal counsel.

True or False Quiz – Answer Key

True False

- | | | |
|--|----------------------------------|----------------------------------|
| A. All emails <u>relating to the Fire District</u> sent to your home email account are personal and do not qualify as a public record. | <input type="radio"/> | <input checked="" type="radio"/> |
| B. All records <u>relating to the Fire District</u> on a Fire District Commissioner's home computer are personal and do not qualify as a public record. | <input type="radio"/> | <input checked="" type="radio"/> |
| C. Only District constituents can request public records from the District. | <input type="radio"/> | <input checked="" type="radio"/> |
| D. A request for a public records can be made orally. | <input checked="" type="radio"/> | <input type="radio"/> |
| E. All communications between a District official and the District's legal counsel are privileged and confidential and are not subject to the public records laws. | <input type="radio"/> | <input checked="" type="radio"/> |
| F. When public records are exempt, the District's records custodian <u>just needs to tell</u> the requesting party at the time of the request that the documents are exempt from the public records. | <input type="radio"/> | <input checked="" type="radio"/> |
| G. A District Commissioner's notes taken at a District meeting solely for the Commissioner's personal use are not a public record. | <input checked="" type="radio"/> | <input type="radio"/> |
| H. Draft and preliminary working documents are subject to the public records laws. | <input checked="" type="radio"/> | <input type="radio"/> |



THANK YOU