



FLORIDA PUBLIC RECORDS LAW

The information contained in this presentation was taken from:

- The 2011 “Government-in-the-Sunshine Manual,” Office of the Attorney General of Florida, (<http://www.myflsunshine.com>)
- “Florida Government in the Sunshine, A Citizen’s Guide,” from the Brechner Center for Freedom of Information, College of Journalism and Communications, University of Florida, (<http://brechner.org>)
- Also see: “2011 Public Records Overview,” by Patricia R. Gleason, Special Counsel for Open Government, Office of Attorney General Pam Bondi.



The Florida Constitution

- Public access to records and meetings of public officials is established by Article I, section 24(a) of the Florida Constitution.
- “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any ... officer, or employee of the state ... except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.”



The Florida Public Records Law: Chapter 119, Florida Statutes

states that it “is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.” §119.01(1).




Section 119.07(1)(a), Florida Statutes

“Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”



Scope of the law: Who is covered?

Definition includes state and local government, public advisory boards and even private entities when they are "acting on behalf of" a public agency



Section 119.011(2), Florida Statutes

defines “agency” as:


[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.



What is a public record?

Section 119.011(12) defines “public record” 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 an agency.



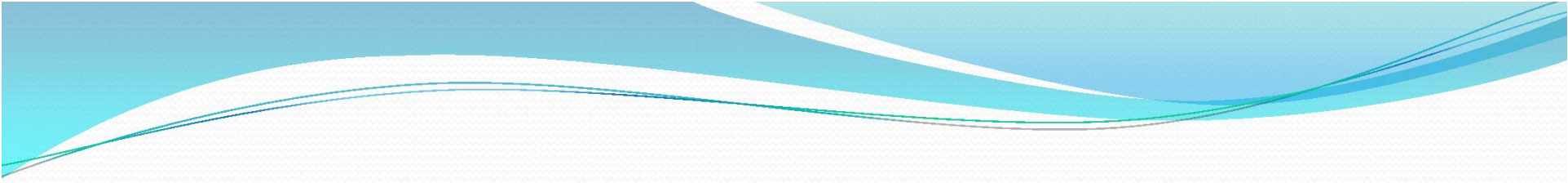
- Records must have been prepared “in connection with official agency business” and be “intended to perpetuate, communicate, or formalize knowledge of some type.”

- Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc., 379 So.2d 633, 640 (Fla.1980); State v. City of Clearwater, 863 So.2d 149, 151 (Fla.2003)



Draft Documents


If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, *or* formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an agency. Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980).

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- "Interoffice memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business."



Electronic records, e-mails, databases, and other computerized records

Computerized public records are governed by the same rules as paper documents. Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet ." Seigle v. Barry, 422 So. 2d 63, 65 (Fla. 4th DCA 1982),

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- Agencies are responsible for ensuring reasonable access to records electronically maintained and should set up their databases to comply with the Public Records Law.
 - However, an agency is not required to create a new record to meet a requester's particular needs.
 - E-mail messages made or received in connection with official business are public records.



Exemptions

The Florida Supreme Court has ruled that agencies must provide access to public records unless the Legislature has specifically exempted them from disclosure.



Section 119.07(1)(e), Florida Statutes

- States that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption.
- Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f).



Partial Exemption


Where a public record contains some information which is exempt from disclosure, s. 119.07(1)(d), F.S., requires the custodian of the record to delete or excise only that portion or portions of the record for which an exemption is asserted and to provide the remainder of the record for examination



More than 850 separate records
are exempted from the Public Records Law.

Examples:

- Law enforcement and security records
- Birth and adoption records
- Hospital and medical records
- Education records
- Social Security numbers contained in official public records



Negotiation records of purchases of real property by state and local agencies, such as appraisals, offers and counteroffers, until a deal is final or will be considered within 30 days.

- **Proprietary Confidential Business Information**
- The Legislature has created a number of exemptions from Ch. 119, F.S., for proprietary confidential business information. The term is generally defined by the statute creating the exemption and frequently includes trade secrets. See, e.g., s. 215.44, F.S. (State Board of Administration); s. 288.075, F.S. (economic development agency)

Section 288.075(1)(a), F.S.

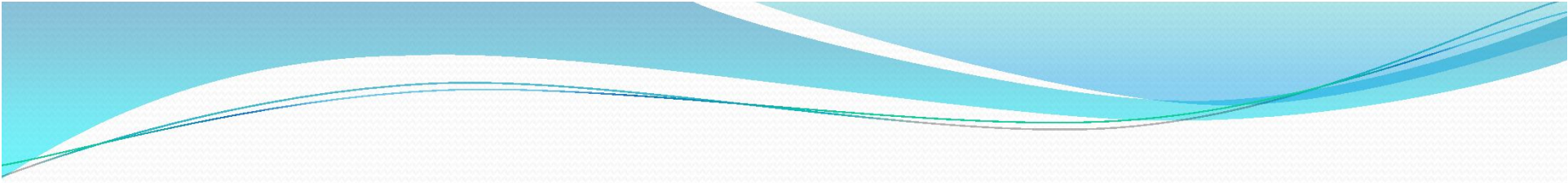
Cf. s. 288.9551, F.S.

- The term "economic development agency" means the state Office of Tourism, Trade, and Economic Development, an industrial development authority, Space Florida, the public economic development agency of a county or municipality, or a research and development authority.
- Also included are the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the related responsibilities, if the county or municipality does not have a public economic development agency.
- The term also includes private persons or agencies authorized by the state, a county or a municipality to promote the general business interests of the state or that municipality or county.



Deadline for producing records

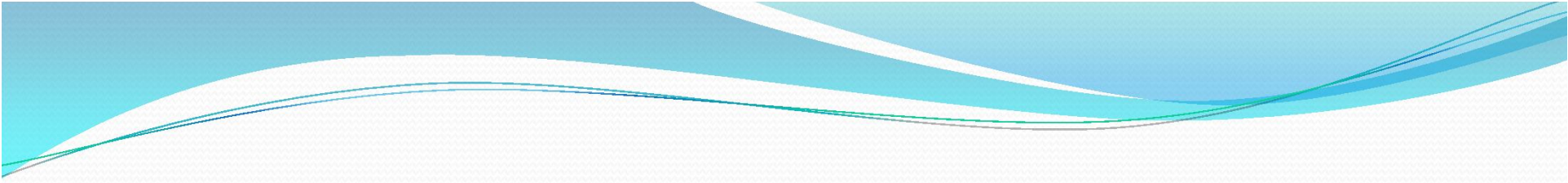
- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests.
- Section 119.07(1)(c) only requires that the custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith.

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- The Florida Supreme Court has stated that the only delay in producing records permitted under Ch. 119, "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." Tribune Company v. Cannella, 458 So. 2d 1075, 1078 (Fla. 1984).



Cost of producing records

- The law provides that the custodian shall furnish a copy of public records upon payment of the fee prescribed by law.
- §119.07(4)(a)1 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less.
- An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. A charge of up to \$1 per copy may be assessed for a certified copy of a public record.

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- §119.07(4)(d) authorizes the imposition of a special service charge when the nature *or* volume of public records to be inspected is such as to require *extensive* use of information technology resources, or *extensive* clerical or supervisory assistance, or both.
 - The charge must be reasonable and based on the labor or computer costs actually incurred by the agency.



How to request access

- The Florida Public Records Law states that any person can inspect and copy public records.
- An individual does not need to state a purpose or special interest to obtain access to a record and does not need to present identification.



Kind of records to ask for: CDGB and HOME

The Consolidated Plan:

- This serves as the planning document of the jurisdiction in order to apply for funding under the CDBG, HOME, ESG, and HOPWA Programs.
- Through this document, the jurisdiction describes its plan to pursue the goals for all the community planning and development programs, as well as for housing programs.
- HUD will evaluate the performance of the jurisdiction through the accomplishment of these goals.



Annual Action Plan –

- This document serves as the jurisdiction’s annual application for funding to HUD under the CDBG, HOME, ESG, and HOPWA Programs.
- The Annual Action Plan includes the amount of assistance the jurisdiction expects to receive (including grant funds and program income) from each of the federal programs and a description of the activities, including funding allocations that the jurisdiction will undertake to address the needs and priorities established in the Consolidated Plan.



Consolidated Annual Performance and Evaluation Report (CAPER) –

- This report describes the accomplishments of each activity undertaken during the previous fiscal year, including how funds were actually used and the extent to which these funds were used for activities that benefited low- and moderate-income residents.



Substantial Amendments –

- Whenever a substantial change, as described under the substantial amendments section, is proposed, said amendment shall be available for public comment for a period of thirty (30) days before submission to jurisdiction's governing body for approval.

Sample Public Records Request Letter :

“Florida Government in the Sunshine, A Citizen’s Guide,” Brechner Center for Freedom of Information, College of Journalism and Communications, University of Florida, (<http://brechner.org>).

- Pursuant to the Florida Public Records Law, Chapter 119 of the Florida Statutes
- I request access to review and photocopy: (List all records you wish to review, including any specifics such as governmental offices, public officials, issues of importance, names or dates. In this section, be as specific as possible in describing the records you want).
- I am willing to pay all lawful and reasonable costs associated with this request. Please notify me in advance what those costs will be.
- If you intend to deny this public request in whole or part, I request that you advise me in writing of the particular statutory exemption upon which you are relying, and an explanation for doing so, as required by Chapter 119 of the Florida Statutes. Additionally, if the exemption you are claiming applies to only a portion of a record, please delete the exempted section and release the remainder of the record as required by law.
- In light of the nature and importance of the records requested, please make them available by (The public records law provides no definitive time limit for fulfilling records requests, but states that agencies must respond to records requests within a reasonable period of time.)