



Public Records 'Working in the Sunshine'

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Public Records
Public Records Requests
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Words of Advice

Public Records: Why do we have it?

- Long Florida history of “Government-in-the Sunshine” laws dating back to 1909.
- Broad access to government proceedings and documents
 - Chapter 119, Florida Statutes (Public Records)
 - Chapter 286, Florida Statutes (Public Business) (particularly s.286.011, Florida Statutes re public meetings and records)

Public Records: Broad definition

- Documents ... Papers ... Letters ... Maps ... Books ... Tapes ... Photographs ... Films ... Sound recordings ... Data processing software ... or Other Material (e.g. e-mails, computer records, drafts circulated, etc., etc.)
- Whatever physical form ... characteristics ... however transmitted
- Made or Received
- Official business (transaction or in course or connection)
- Used to perpetuate, communicate or formalize knowledge
- By any agency

Public Records: Examples

- Facsimile
- E-mails (not if wholly personal content)
- Video
- Audiotape
- CDs, DVDs
- Postings on an agency's social networking site such as Facebook
 - Nature of the record (not physical location or physical form) dictates whether it is a public record and what applicable retention schedule should apply
 - Custodian legally responsible for supervision, care, maintenance, control or guardianship of the record

PR Requests: Who asks/who gives?

- Any **PERSON** can request
- In Any **MANNER** (in writing or orally)
- For Any **REASON**
- From Any **AGENCY** to inspect and/or copy (Agency includes any State... County ... District ... Authority... Municipal officer ... Department ... Division ... Board ... Bureau ...Commission ...or other separate unit of government, or any other public or private agency . . . Person. . . Partnership. . .Corporation . . . or Business entity acting on behalf of any public agency, or created or established by law.
- Any **PUBLIC RECORD** if not exempt in part or whole

PR Requests: How and When to Comply?

- **Acknowledge receipt** of request.
- **Respond in good faith** (that includes making reasonable efforts to determine whether record exists and how to access)
- Provide **estimated time and cost** to respond/produce
- Allow person to **inspect and/or copy** at any reasonable time under reasonable conditions and under supervision.
- **Identify** any applicable **exemptions and redact**.
- Provide in **reasonable time under reasonable circumstances**.

PR Requests: What to give?

- **Public records in your custody** (whether record originated in your agency or not) *except for information exempt under law*
- **What already exists and in format maintained**--No duty to create records or reformat just to respond to requestor's request
- **Duty may exist to create or provide access through specifically designed program, at requester's expense if:**
 - Data in electronic recordkeeping system is not easily accessible in existing format.
 - Current recordkeeping system does not redact confidential and exempt information automatically.
 - Current format does not fairly or meaningfully represent the record.

PR Requests: How much?

- **Fees for duplication:** Actual cost
- **Copying document fees:** 15 cents per one-sided and 20 cents for two-sided, unless law says otherwise
- **Fees for certified copies:** \$1 per copy of record
- **Special service charge:** If nature or volume of request requires extensive (“more than 15 minutes to locate, review for confidential information, copy, and re-file the requested material”) use of information technology resources, or of clerical or supervisory assistance.

See Section 119.07(4)(d), F.S.; R1-2.0031, Fla. Admin. Code

Public Records Request: What if there is a dispute?

- ✓ Attempt to resolve
- ✓ Participate in Voluntary Mediation Program with the Florida Attorney General's Office. See s.16.60, F.S.
- ✓ (Expect) judicial action by requestor if not resolvable (mandamus or injunctive relief)
- ✓ (note if record due for destruction –must hold off until resolution)
- ✓ Request Attorney General opinion re public records law

Public Records Exemptions

- Created by the Legislature
- Specific justification required
- Must be no broader than necessary to accomplish the stated purpose. Article I, s. 24, Florida Constitution
- Strictly construed
- Designated as “exempt” or “confidential and exempt” (more strict—only disclosed as stated in law-no exceptions)
- Applied differently in discovery in litigation

PR Exemptions: Agency Responsibility

- **Maintain the confidentiality and exempt status** of your agency public records and other agency records in your custody
- **Review and redact all confidential and/or exempt information/record** Do not alter/mark original document/material. Make copy and then redact on copy.
- **Identify/cite specific statute you are relying for exemption**
- **Provide public records**

PR Applicable Exemptions for Elections:

(not exhaustive)

- Voter applicant's/registered voter's:
 - ✓ Social security number
 - ✓ Florida driver's license /state ID card number
 - ✓ Voter registration agency where a person registered to vote or updated his or her voter registration
 - ✓ Signature [from copying only--may be inspected]
 - ✓ A person's choice to decline to register or update records

Section 97.0585, F.S. See also section 119.071(5), F.S.

PR Applicable Exemptions for Elections: (not exhaustive)

- **Address/identification confidentiality of certain classes of high-risk governmental professionals** (active and former): state or federal judicial or quasi-judicial or administrative law judges, local, statewide, or federal prosecutors, public defenders and other criminal or civil regional counsel, human resource/labor relations personnel, *sworn* and *civilian* law enforcement personnel, corrections and probation officers, code enforcement officers, guardians ad litem, child abuse investigators, child support enforcement personnel (Department of Revenue and local government), specified Department of Juvenile Justice personnel, certified firefighters, social services counselors, Department of Business & Professional Regulation inspectors and investigators, and county tax collectors [Extends to their children and spouses. Exemption lasts until death or withdrawal of request] (See sections 119.071(4)(d)1., 119.071(5)(i), F.S.)
 - ✓ **Triggered only upon written request to each agency with record unless it is employing agency, then it is automatic**

PR Applicable Exemptions for Elections:

(not exhaustive)

- **Driver's licensees' information.** Section 119.0712(2), F.S.
- **DAVID DL/State ID Photos-Signatures** ("Driver and Vehicle Information Database" Section 322.124, F.S.)
- **Official ballots and ballot cards**(while in custody of supervisor/canvassing board)--special hybrid exemption: may be inspected and copied but cannot be handled or touched by any other person other than the supervisor of elections or employees. Sections 119.07(5), F.S.; 101.572, F.S.

PR Applicable Exemptions for Elections: (not exhaustive)

- **Domestic violence victims**—name, address, phone number—victims must be *registered* with ACP (Attorney General's Office program for Address Confidentiality. Section 741.465, F.S.
- **Stalking victims**—same as above but must file 'statement of stalking' with AG's ACP. Section 97.585(3), F.S.

Registration information for these AG program participants are processed entirely manually and outside of the Florida Voter Registration System.

PR Applicable Exemptions for Elections: (not exhaustive)

- **Victims of certain violent crimes**—only address and other identifying information exempt--written request for exemption must include official verification of crime (this is not an ACP participant; person is still registered on rolls.) See section 119.071(2)(j), F.S.

PR Applicable Exemptions for Elections: (not exhaustive)

- **Absentee ballot request information** (all that you collect or receive to process a request) *Section 101.62(3), F.S.*
 - ✓ Exceptions to exemption: *canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, a registered political committee, a registered committee of continuous existence, and a voter (only his or her own information)*
 - ✓ See—State created form (DS-DE 70/R1S-2.043) used to verify and control access to absentee ballot info from Division (user id and password issued but expires at end of each year)

The fact that a person voted absentee IS NOT exempt after election

PR Applicable Exemptions for Elections:

(not exhaustive)

- **Electronic solicitation/campaign contributions--user identification and passwords held by the Department of State. Section 106.0706, F.S.**
- **All campaign reporting records until report is finally submitted. Section 106.0706, F.S.**
- **Sworn complaints regarding campaign financing until determination of probable cause, or other subsequent proceeding. Section 106.25(7), F.S.**

PR Applicable Exemptions for Elections: (not exhaustive)

- Minimum security procedures are not exempt **EXCEPT** as pertains to the part that may contain:

- 1. Data processing software** either as a trade secret or any *agency produced data processing software that is sensitive*. See sections 119.071(1)(f); 812.081; 101.5607(1)(d), F.S. (all voting system software filed with state).

Software prepared by state except as otherwise stated is NOT exempt from chapter 119, F.S.

PR Applicable Exemptions for Elections: (not exhaustive)

2. Information relating to security systems and plans (that would include any information that would compromise the security of the voting system by facilitating modification, disclosure or destruction of data or information technology resources

(e.g., IP addresses, passwords, list of those with access, etc.) (s. 119.071(3)(a); s.281.301.). Reason for exemption is shown by the following example: If access to a secured system is based on an integrated user identification and password format that uses authorized users' names or parts thereof and other personal identifying information and that incorporates a particular user access sequence, release of such information coupled with other information in public domain could directly or indirectly be used to figure out how to decode the security system. The public disclosure of modem numbers could be used to tie up phone lines leading to a collapse with a computer system.)

Public Records Management

- **Law requires retention, record-keeping, storage, and disposition** (See section 257.36, F.S.)
- **Oversight by Division of Library and Information Services /Bureau of Records Management**
- **Promotes efficient, effective and economical management of public records** (space savings, increased efficiency of information and document retrieval especially for responding to public records, better identification and protection of records, control over creation of new records.)

PR Records Management: RETENTION

- **Retention schedule:** Establishes minimum time to keep records. If there is no applicable schedule item, you must keep records until specific one is created.
- **Review Schedule GS-3(Election Records)** periodically for reminder/updates (last revised in 2/2011 for item 106). <http://dlis.dos.state.fl.us/barm/genschedules/gso3.pdf>
- **Keep to the schedule:** *You cannot produce what you no longer legally have. Corollary: You have to produce what you do have (even if the retention period has passed or you don't know where the record is.)*

PR Records Management:

Unique records

- **Unused ballots, forms and other election materials:** May be destroyed upon Department of State's approval (no applicable retention schedule) Section 101.545, F.S.
- **E-mails, Social Networking Sites used by Agency such as Facebook:** Facebook entries and postings are subject to same analysis in determining public records status, retention and exemption

PR Records Management:

Unique records- E-mails

- Examine content, purpose or nature of public records to determine applicable retention schedule.
- See also Retention Schedule for State & Local Govt at: <http://dlis.dos.state.fl.us/barm/genschedules/GS1-SL.pdf> (revised 11/2006 with updates in 08/2010)
 - ✓ Items #17 (administrative-3 fiscal years), item #338 (program and policy development-5 fiscal years provided applicable audit released); items #58,88 (if it relates to budget records, approved annual budget and support documents(items #58, 88, retain as permanent, and 3 fiscal years provided applicable audit released, respectively; item #146 (transitory message series if it primarily communicates information of short-term value like scheduled meetings or appointments, then retain until obsolete, superseded or administrative value is lost; item #27 (litigation series,5 years after case closed or appeal expired.).

PR Records Management: ORIGINALS

Paper versus Electronic

- Master record consists of original record in whatever format.
- Scanned or electronic copy of original public record can become master record (e.g., law says that scanned images of original voter registration applications can be 'master' record See sections 98.461(1), 98.081, F.S. Imaging/electronic recordkeeping must comply with **Rules 1B-24, 1B-26.003, F.A.C.**

PR Records Management: ORIGINALS

Paper versus Electronic (cont'd)

- Electronic/scanned version has same force and effect as original for evidentiary purposes or authentication)
Section 92.29, F.S.
- Once properly scanned, paper can be destroyed--
Disposition/destruction form must state that 'paper records are duplicates of electronic 'master record'

PR Records Management

- **Public records request:** STOP disposition of records scheduled for upcoming destruction.

You cannot dispose of the record for 30 days after written request to inspect or copy. If court action taken in 30 days, you cannot dispose of records until court order. See s. 119.07(1)(h), Fla. Stat.

- **Assistance:** Contact your agency's records management liaison officer and/or the records managers with the State Library & Archives (850.245-6750). Seminars are offered frequently.

Primary Government in the Sunshine Source

Florida Attorney General's Website

- <http://www.myflsunshine.com/>
 - **Sunshine Law Training** (including videos on how law applies to electronic communications/social networking sites, to municipal and local government records, to identify and redact exempt information, and to recovery of fees and costs.)
 - **Mediation Program**

Words of Advice

- **“Don’t get burned.”** (Sometimes you just have to sweat through the public records request)
- **Respond reasonably and timely to public records request**
- **Establish and maintain good records management procedures.**
- **Clarify or seek guidance if you are uncertain:**
 - Agency records management liaison officer
 - Florida Department of State’s Records Management Center
 - Division of Elections/General Counsel’s Office/Florida Department of State
 - Attorney General’s Office for Advisory Opinions