

Public Records Requests

Public Record Requests

FRMA 2018 Annual Conference

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Safety Harbor Florida

Public Records Requests

Welcome & before we start

Exits

Restrooms

Phones / Devices

Heckling

Public Records Requests

Disclaimer

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Public Records Requests

About your presenter:

Tim O'Toole

Credentials:

CRA, RMLO, *Sunshine Certificate,*
Candidate – FCRM, IGP

Work History:

Commercial Record Center 1995-2000 (5 Years)

Lake County BCC 2000-2003 (3 Years)

Reedy Creek Improvement District 2003-2017 (14 Years)

Central Florida Expressway Authority 2017 – Present (1 Year)



23 years in RIM

18 years of handling Public Records Request

Public Records Requests

Objectives

How to Handle

Confidential vs. Exempt Records

E-Mail

Social Media

Fees

Penalties

FAQ's

Resources

Public Records Requests

Room Sample

Less than 1 Year

Between 3 – 5 Years

Over 10 Years

Over 15 Years

Public Records Requests

“The only consistency is inconsistency”

Public Records Requests

Scope of the Public Records Act

Provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf.

In the absence of a statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge.

Public Records Requests

What is a Public Record?

According to section 119.011(12), F.S., “Public records” means:

“all 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.*”

Public Records Requests

What is a Public Record? *(continued)*

In 1980, the Florida Supreme Court interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to ***perpetuate, communicate or formalize knowledge.***

Associates, Inc.

Shevin v. Byron, Harless, Schaffer, Reid and

How to Handle

How to Handle a Public Record Request

How to Handle

What “Must” We Do?

1. Acknowledge the request promptly and in good faith. *s. 119.07(1)(c), F.S.*
2. Redact portions of records where an exemption applies and produce the remainder of such record. *s. 119.07(1)(d), F.S.*
3. Cite statute when applying exemption. *s. 119.07(1)(e), F.S.*
4. Maintain request, for a period of 30 days, after the date of inspection before it may be disposed of. *s. 119.07(1)(h), F.S.*

Best Practice: when citing a statute as an exemption it's a good idea to provide that in writing to the requestor even if he/she does not specifically request you do so.

How to Handle

What “Must” We Not Do?

1. Must not delay...
2. Must not refuse...
3. Must not hinder...
4. Must not ignore...

How to Handle

When is it ok to say No?

1. Exemptions
2. Sealed
3. Expunged
4. Not created (*records do not exist*)
5. Disposed (*destroyed*)

How to Handle

Providing Public Records

Section 119.07(1)(a), F.S., establishes the right of access to public records in plain and unequivocal terms:

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 the supervision by the custodian*** of the public records.

How to Handle

Providing Public Records

Section 119.07(1)(b), F.S., allows for the designation of another person within the agency to supervise:

A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but ***must disclose the identity of the designee to the person requesting*** to inspect or copy the public records.

Confidential vs. Exempt

Confidential vs. Exempt Records

Confidential vs. Exempt

Confidential vs. Exempt

Are records which are confidential and exempt from disclosure treated differently from those which are merely exempt from disclosure requirements?

Yes, there is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Act and confidential.

The Legislature is responsible for determining these confidential and exempt restrictions to access.

Confidential vs. Exempt

Confidential vs. Exempt

Confidential records:

If information is made confidential in the statutes, the information **is not** subject to inspection by the public and **may be released only** to those persons and entities designated in the statute.

Several examples of confidential records are:

- Social security numbers
- Medical Records
- Bridge plans

Confidential vs. Exempt

Confidential vs. Exempt

Exempt records:

If records are not made confidential but are simply exempt from the mandatory disclosure requirements in s. 119.07(1), F.S., **the agency is not prohibited** from disclosing the documents in all circumstances.

Once an agency has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information.

Best Practice: when deciding whether or not to release exempt records think of the long term impacts that may have on your program and organization as you move forward. Consult with Legal if available and think about setting precedence.

Confidential vs. Exempt

Confidential vs. Exempt

Exempt records:

Several examples of exempt records are:

- Examination question and answer sheets
- Active criminal investigative information
- Home addresses, telephone numbers, photographs and dates of birth of specified employees, including spouses & children:
 - Human Resource Managers (local governments)
 - Inspectors general and internal auditors performing specified duties
 - Law enforcement and correctional personnel

E-Mail

E-Mail as a Public Record

E-Mail

Is E-mail a public record?

E-mail which is created or received by an agency employee **in connection with the transaction of official business** of the agency is considered a public record and is subject to inspection and/or copying in accordance with Chapter 119, *Florida Statutes*, and is subject to applicable state retention laws and regulations, unless expressly exempted by law.

Florida Department of State Policies and Procedures Electronic Mail Policy

Supreme Court of Florida

Nos. SC02-1694 & SC02-1753

STATE OF FLORIDA,
Petitioner,

vs.

CITY OF CLEARWATER,
Respondent.

TIMES PUBLISHING COMPANY,
Petitioner,

vs.

CITY OF CLEARWATER,
Respondent.

[September 11, 2003]

PARIENTE, J.

We have for review a decision of the Second District Court of Appeal,
which certified the following question of great public importance:

WHETHER ALL E-MAILS TRANSMITTED OR RECEIVED BY
PUBLIC EMPLOYEES OF A GOVERNMENT AGENCY ARE
PUBLIC RECORDS PURSUANT TO SECTION 119.011(1),

E-Mail

Is E-mail a public record?

E-mail messages **created or received for personal use** are **NOT** generally considered public records and do not fall within the definition of public records by virtue of their placement on an agency owned computer system.

However if the agency discovers misuse of the e-mail system, personal e-mails that are identified as being in violation of agency policy may become public record as part of an investigation.

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Definition of E-Mail:

E-mail is the electronic transfer of information, typically in the form of electronic messages, memoranda, and attached documents, from a sending party to one or more receiving parties by means of an intermediate telecommunications system.

Florida Department of State Policies and Procedures Electronic Mail Policy

Fees

Fees

Fees

Fees for Copying Public Records:

The custodian of public records shall furnish a copy, or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

- Up to \$0.15 cents per one-sided copy for duplicated copied of not more than 14 inches by 8 ½ inches;
- No more than an additional \$0.05 cents for each two-sided copy;
- For all other copies, the actual cost of duplication of the public record.
- An agency may charge up to \$1.00 per copy for a certified copy of a public record.

Fees

Extensive Use Fees:

If the nature or volume of public records requested to be inspected or copied...is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge...

s. 119.07(4)(d), F.S.

Fees

Extensive Use Fees: (continued)

The special service charge, shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

s. 119.07(4)(d), F.S.

Best Practice: is to have a statement in your policy stating at what point you may begin to invoke this special service charge.

Violations & Penalties

Violations and Penalties of the Public Records Law

Violations & Penalties

Violations and Penalties

Any public officer who:

- Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.00
- Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083

Any person who willfully and knowingly violates:

- Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084

FAQ's

**Public Records
Frequently Asked Questions**

FAQ's

Q1. Validity of agency conditions on access

The term ***“reasonable conditions”*** refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review.

Accordingly, the ***“reasonable conditions”*** do not include a rule or condition of inspection which operates to restrict or circumvent a person's right of access.

FAQ's

Q2. What individuals are authorized to inspect and receive copies of public records?

Section 119.01, F.S., provides that “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by **any person.**”

Q3. Must an individual show a “legitimate interest” or provide the purpose of the request?

No. The requestor is not required to explain the purpose or reason for a public records request.

FAQ's

Q4. Role of the records custodian (What agency employees are responsible for responding to public record requests?)

The term “custodian of public records” means “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having custody of public records, ***or his or her designee.***”

The custodian of public records, or a person having custody of public records, may designate another officer or employee of the agency to permit the inspection and copying of public records, but ***must disclose the identity of the designee*** to the person requesting to inspect or copy public records.

FAQ's

Q5. Requests for copies vs. requests to inspect public records

“The best-reasoned authority in this country holds that the right to inspect records carries with it the right to make copies.”

O'Donnell, 17 So. 2d 607 (Fla. 1944)

(Fuller v. State ex rel.

It is the policy of this state that all state, county, and municipal records are open for personal inspection and ***copying*** by any person.”

FAQ's

Q6. Records maintained by more than one agency

The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption.

86-69

AGO

If information contained in the public record is available from other sources, a person seeking access to the record is not required to make an unsuccessful attempt to obtain the information from those sources as a condition precedent to gaining access to the public records.

So. 2d 977, 979 (Fla. 2d DCA 1976)

(Warden v. Bennett, 340

FAQ's

Q7. Records not in physical possession of agency

An agency is not authorized to refuse to allow inspection of public records it made or received in the course of official business on the grounds that the documents are in the actual possession of another agency or official other than the records custodian.

FAQ's

Q8. “Overbroad” public records requests

In the absence of a statutory exemption, a custodian must produce the records requested regardless of the number of records involved or possible inconvenience.

However, the custodian is authorized to charge, in addition to the cost of duplication, a reasonable service charge for the cost of the extensive use of information technology resources or of personnel, if such extensive use is required because the nature or volume of public records to be inspected or copied.

s. 119.07(4)(d), F.S.

FAQ's

Q9. Written request or form requirements

Chapter 119, F.S. does not authorize an agency to require that requests for records be in writing.

As noted in AGO 80-57, a custodian must honor a request for copies of records which is sufficient to identify the record desired, whether the request is in writing, over the telephone, or in person, provided that the required fees are paid.

Best Practice – take any public record request seriously.

FAQ's

Q10. Identification of requester

A person requesting access to or copies of public records ***may not be required*** to disclose his/her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records.

FAQ's

Q11. Remote Access

Section 119.07(2)(a), F.S., states that as an additional means of inspecting or copying public records, a custodian may provide access to the public records by remote electronic means, provided exempt or confidential information is not disclosed.

Note, this is an additional means of access and is insufficient where the person requesting the records specifies the traditional method of access via paper copies.

Lake Shore Hospital Authority v. Liker, 168 So. 3d 332, 333 (Fla. 1st DCA 2015).

FAQ's

Q12. Requests to create new records, answer questions about the records, or reformat existing records

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records ***“at any reasonable time, under reasonable conditions and under supervision by the custodian of the public records”*** provided the prescribed fees have been paid.

However, a custodian ***is not required to give out information*** from the records of his/her office. AGO 80-57

Accordingly, an agency is ***not ordinarily required to reformat*** its records and provide them in a particular form as demanded by the requester. AGO 08-29

FAQ's

Q13. Records available in more than one medium

An agency must provide a copy of the record in the medium requested *if* the agency maintains the record in that medium, and the agency may charge a fee which shall be in accordance with Ch. 119, F.S. Section 119.01(2)(f), F.S. and see AGO 13-07.

Accordingly, an agency violated the Public Records Act when it referred the requester to a website instead of providing paper copies as the requester asked.

Lake Shore Hospital

Authority v. Lilker, 168 So. 3d 332 (Fla. 1st DCA 2015).

FAQ's

Q14. Amount of time allowed for response to public record requests

- Duty to acknowledge requests promptly

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***.

- Automatic delay impermissible

A policy which provides for an automatic delay in the production of public records is impermissible.

FAQ's

Q14. Amount of time allowed for response to public record requests *(continued)*

- Unjustified delay

The public records act does not contain a specific time limit such as 24 hours or 10 days) for compliance with public records requests.

- Arbitrary time for inspection

The Public Records Act authorizes inspection and copying of public records “at any reasonable time.” However the custodian is not authorized to establish an arbitrary time period during which records may or may not be inspected.

FAQ's

Q15. Confidentiality agreements

An agency “cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements.”

August 19, 1991)

The Tribune Company v. Hardee Memorial Hospital, No. CA-91-370 (Fla. 10th Cir. Ct.

(confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act.)

FAQ's

Q16. Redaction of confidential or exempt information

If the custodian asserts that an exemption applies to part of the record, the custodian “shall redact that portion...and shall produce the remainder of such record for inspection and copying.” Section 119.07(1)(d), F.S.

Reminder, currently have over 1100 exemptions in the Public Records Act.

FAQ's

Q17. Privacy rights

It is well established in Florida that “neither custodian or records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency.”

Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA)

Williams v. City of

In reaching the conclusion that public records must be open to public inspection unless the Legislature provides otherwise, the courts have rejected claims that the constitutional right of privacy bars disclosure.

Article I, s. 23, Fla. Const., provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. *This section shall not be construed to limit the public's right of access to public records and meetings as provided by law. (e.s.)*

FAQ's

Q18. Liability of disclosure

Nothing in Ch. 119, F.S., indicates an intent to give private citizens a right to recovery for an agency negligently maintaining and providing information from public records.

(agency has no common law or statutory duty to citizen to maintain accurate records)

Accord Hillsborough County v. Morris, 730 So. 2d 367 (Fla. 2d DCA 1999)

However, a custodian is not protected against tort liability resulting from that person *intentionally* communicating public records or their contents to someone outside the agency which is responsible for the records unless the person inspecting the records has made a bona fide request to inspect the records or the communication is necessary to the agency's transaction of its official business.

Resources

Resources

Resources

- Government-In-The-Sunshine Manual
- State of Florida The Basics of Records Management Manual
- Florida Department of State (<http://dos.myflorida.com/library-archives/>)
- Florida Attorney General (<http://myfloridalegal.com/ago.nsf/opinions>)
- Online Sunshine (<http://www.leg.state.fl.us/welcome/index.cfm>)
- First Amendment Foundation (<https://floridafaf.org/>)

Thank You

Questions, Comments, or Concerns