

PUBLIC RECORDS OVERVIEW: October 26, 2016

Florida Government Finance Officers
Association



Patricia R. Gleason
Special Counsel for Open Government
Attorney General Pam Bondi

SCOPE OF THE PUBLIC RECORDS LAW

- Florida's Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption.

The term “public records” means:

- a) 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” **(includes electronic communications like text messages, emails)**.
- b) Made or received pursuant to law or ordinance or in connection with the transaction of official business
- c) By any agency [including a private entity acting ‘on behalf of’ a public agency]
- d) Which are used to perpetuate, communicate, or formalize knowledge

Statutory Exemptions

- Difference between “exempt” and “confidential” records
- Exemptions applicable to financial records (partial listing)
 - Credit card, debit card and bank account numbers
 - Sealed bids
 - Trade secrets
 - Certain economic development records

PROVIDING PUBLIC RECORDS

- a) Public records cannot be withheld at the request of the sender
- b) A requestor is not required to show a “legitimate” or “noncommercial interest” as a condition of access
- c) A request cannot be denied because it is “overbroad”
- d) Unless authorized by another statute, an agency may not require that public records requests be in writing or require the requestor to identify himself or herself

PROVIDING PUBLIC RECORDS

- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days).
- The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.

PROVIDING PUBLIC RECORDS

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- An agency is not required to create a new record

PROVIDING PUBLIC RECORDS

- Chapter 119 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 additional 5 cents may be charged for two-sided copies. For other copies, the charge is the actual cost of duplication of the record. Actual cost of duplication means the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost.

Fees

- In addition to the actual cost of duplication, an agency may impose a reasonable service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.



Retention

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained.

Penalties for noncompliance

- a) Criminal penalties
- b) Civil action
- c) Attorney's fees

Review Questions

- **I. A city clerk wants to send an email from his personal computer to a city councilmember about an item on the council agenda. Which statement is correct?**
- **A. The email is a public record**
- **B. The email is not a public record because personal emails are not subject to the public records law.**
- **C. The email is not a public record but the councilmember should not respond to the email because the response would violate the Sunshine Law.**
- **D. The email is a public record but the councilmember should not respond because the response would violate the Sunshine Law.**

Review Questions

- **3. A mayor has received a public records request for her emails. Which of the following emails are public records?**
- **A. Email messages from the mayor that are sent from her personal home computer in which the mayor explains to the city manager why she believes that city hall must be renovated.**
- **B. Email messages from the mayor that are sent from her personal home computer in which the mayor asks her brother whether he would like to accompany the mayor and her family on vacation.**
- **C. Email messages from the mayor that are sent from her government computer in which the mayor asks her father whether he would like to accompany her and their family on their annual vacation.**
- **D. A and C are correct.**

Review Questions

- **4. A city police department receives a public records request for photographs of a crime scene from a closed robbery case. There is no statutory exemption that applies to the photographs. Which of the following statement is correct?**
- **A. The department is not required to release the photographs because the public records law does not apply to photographs.**
- **B. The Department must release the photographs.**
- **C. Unless release of the photographs would violate accepted police standards and procedures, the department must release the photographs.**
- **D. Unless the person taking the pictures has asked the department not to release them, the department must release the photographs.**

Review Questions

- **5. A state employee, Rip V. Winkel, is given a written reprimand for sleeping on the job. The employee files a grievance, and after a public hearing, the grievance committee rules that the employee should have been given a written warning instead of a reprimand. The committee enters an order declaring that the reprimand is invalid. A few weeks later, the agency receives a public records request for all records relating to Mr. Winkel's employment. Which of the following statements is correct?**

Review Questions

- **A. Because the reprimand was overturned, the agency should destroy it.**
- **B. The reprimand is a public record and must be provided in response to the public records request although the agency may attach a statement noting that the reprimand was overturned by a grievance committee.**
- **C. Because the reprimand was overturned, the reprimand should be placed in a sealed envelope and the agency should not produce it in response to the public records request.**
- **D. The reprimand is a public record because the grievance committee should not have held a public hearing on the grievance.**

Review Questions

- **6. A city clerk has received over 150 public records requests over the past year from John Jones. Each of the public records requests asks for records relating to Jones' ex-wife who is a city employee. Jones is very rude and obnoxious when he comes to city hall to make his requests. Which of the following options is available to the clerk?**
- **A. Because Jones is so rude, the clerk would be authorized to ban him from city hall and instead require him to make his requests in writing or over the telephone.**
- **B. Because Jones has asked for an extraordinary number of records, the city clerk would be authorized to ask him to specify the particular records that he wants.**
- **C. Because Jones has made numerous public records requests which all relate to his ex-wife, he can be charged with stalking.**
- **D. None of the above.**

Review Questions

- **7. A state employee is working on an investigative report. The investigation has been going on for several weeks and the employee has prepared a number of drafts of the report. A public records request is filed asking for “all records relating to the investigation.” Which of the following constitutes a public record and must be released unless there is a statutory exemption?**
- **A. An early draft that never left the employee’s desk and was never circulated to anyone within or outside the agency.**
- **B. A draft report that was sent to the employee’s supervisor and was returned with a note “need to make changes”**
- **C. A draft report that was emailed to the supervisor but the supervisor has not read it yet.**
- **D. B and C.**

Additional Resources

Office of Attorney General Pam Bondi

website: <http://www.myfloridalegal.com>

Governor Rick Scott website:

<http://www.flgov.com>

First Amendment Foundation website:

<http://www.floridafaf.org>