

Section 15 – Public Records/Sunshine Law/Ethics/Ordinances

Publics Records/Sunshine Laws

The State of Florida has established by law some of the most comprehensive open government laws in the country, laws that can impact virtually every aspect of local government operations. The open government laws include the Public Records Law (Chapter [119](#), F.S.) and the “Sunshine Law” (See Section [286.011](#), F.S.). These laws are generally intended to provide public access to government records and meetings.

The Florida Department of Legal Affairs, headed by the Attorney General, is responsible for administration of the open government laws and publishes the *Government-in-the-Sunshine Manual* to assist local governments and agencies in implementing and adhering to these laws. An electronic edition of the *Manual* is available on the Attorney General’s website, <https://www.myfloridalegal.com/open-government/sunshine-manual>. The Attorney General’s Office provides [training resources](#) on the website to assist local governments in resolving issues related to public records (including exemptions and redactions thereto), fees and costs that may be charged for providing public records, and public meeting requirements. The web site also includes a searchable database of [Attorney Generals’ opinions](#).

Public Records Law. Chapter [119](#), F.S., provides that as a matter of state policy, “.... 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”. Public records are defined to include “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”. Electronic records created on personal devices (e.g. emails, text messages, chats, etc.) are also public records. However, unlike work performed and communicated through your organization’s information systems, information communicated on a personal device is not captured and backed up for the purpose of records retention. It is up to the personal device owner to retain the records in accordance with the Public Records Law. Therefore the use of personal devices for work related communications should be avoided as much as possible. Please note that an organization may maintain the records created on personal devices using software and/or applications approved by their Information technology division.

The Division of Library and Information Services within the Florida Department of State is responsible for adopting rules to establish retention schedules and a disposal process for public records. With regard to the provision of access to such records, Chapter [119](#), F.S., includes requirements related to:

- Maintenance, preservation, and retention of public records.
- Fees for inspection and copying of public records.
- Exemptions from inspection or copying of public records.

These requirements have given rise to numerous questions regarding their application to specific circumstances, many of which have been resolved either through an opinion rendered by the Attorney General or by a court of law. Such resolutions have been summarized by the Attorney General in the *Government-in-the-Sunshine Manual*. Topics covered in the *Manual* include:

- What kinds of records are subject to the Public Records Law?
- To what extent can an agency regulate inspection and copying of public records?
- What are the statutory exemptions?
- What fees may be imposed for inspection and copying of public records?
- What are the requirements for maintenance and disposal of public records?

Sunshine Law. At the local government level, the Sunshine Law is intended to provide open access to government meetings. The basic requirements of the Sunshine Law are as follows:

- Meetings of public boards or commissions must be open to the public.
- Reasonable notice of such meetings must be afforded to the public.
- Minutes of the meeting must be taken.

As with the Public Records Law, the resolution of numerous questions regarding the application of Sunshine Law requirements to specific circumstances have been summarized by the Attorney General in the *Government-in the Sunshine Manual*. Topics covered in the *Manual* include:

- Which agencies are subject to the Sunshine Law?
- What meetings are subject to the Sunshine Law?
- Does the Sunshine Law apply to telephone, electronic, or written communication between Board members?
- What types of discussions are subject to the Sunshine Law?
- To what other activities does the Sunshine Law apply?
- What are the meeting notice and procedural requirements?
- What are the exceptions?
- What are the consequences for failure to comply with the requirements?

Government officials should also be aware that there may be other requirements in State law, local ordinance, or policy that are supplemental to the Sunshine Law, particularly with regard to notice and minutes requirements.

Issue Resolution. In the event that a local government is faced with a Public Records Law or Sunshine Law issue, the appropriate government officials should:

- Review the requirements of the Public Records or Sunshine Law and any other applicable statutory provisions.
- Review any applicable local ordinances or policies.
- Consult the Attorney General's *Manual*.
- Seek the advice of legal counsel.
- If still unresolved, request an opinion from the Attorney General.

Ethics Law

The Code of Ethics for Public Officers and Employees, adopted by the Legislature as [Part III of Chapter 112](#), F.S., contains standards of ethical conduct and disclosures applicable to public officers, employees, candidates, lobbyists, and others in State and local government, with the exception of judges. Additionally, the Code of Ethics requires constitutional officers, elected municipal officers, commissioners of community redevelopment agencies, and elected officers of independent special districts to complete four hours of ethics training annually that, at a minimum, addresses s. 8, Art. II of the State Constitution, the Code of Ethics, and Florida law on public records and public meetings. The State of Florida publishes this Code of Ethics at: <https://ethics.state.fl.us/>.

Ordinance Laws

Sections 125.66 and 166.041, F.S., respectively, set forth a uniform method for the adoption and enactment of county and municipal ordinances and resolutions. It establishes minimum notice procedures that may not be lessened or reduced by the county or municipality. Failure to comply with the notice requirements may have serious consequences. For example, failure to comply with specified notice requirements may render a zoning ordinance void. Additionally, Sections 125.66 and 166.041, F.S., were recently revised by Laws of Florida Chapter 2023-309 to require that counties and municipalities, for certain types of ordinances, prepare a business impact estimate before adopting the ordinance, and to suspend enforcement of an ordinance in certain circumstances if the ordinance is the subject of a civil action challenging the ordinance's validity. These laws now authorize the court to award up to \$50,000 in attorney fees, costs, and damages to a prevailing plaintiff.

References

Chapter 112, Part III, F.S.

Chapter [119](#), F.S.; Public Records

Section [125.001](#), F.S.; Board meetings; notice

Section [125.17](#), F.S.; Clerk

Section [125.66](#), F.S.; Ordinances; enactment procedure

Section [166.041](#), F.S.; Procedures for adoption of ordinances and resolutions

Section [286.011](#), F.S.; Public meetings and records; public inspection; criminal and civil penalties

Government-in-the-Sunshine Manual – Florida Office of the Attorney General:
<https://www.myfloridalegal.com/open-government/sunshine-manual>

Information relating to archives and records management, including retention requirements:

<http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>