



**FLORIDA
DEPARTMENT
of STATE**

Election Records 'Working in the Sunshine'

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Scope

Public Records

History

- 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)

Broad definition

- ⑩ 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.)
- ⑩ Whatever physical form . . . characteristics . . . means of
transmission
- ⑩ Made or Received
- ⑩ Transaction or in course or in connection with official
business
- ⑩ Used to perpetuate, communicate or formalize knowledge
- ⑩ By any agency

Mediums

- 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

Requests

Public Records

Requests

- 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.

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- Any PUBLIC RECORD not otherwise exempt

Processing requests

- **Acknowledge receipt of public records request.**
- **Respond in good faith.** That includes making reasonable efforts to determine from other agency officers and employees whether record exists and how to access.
- **Provide estimated time to respond and cost to produce.**
- **Allow for inspection and copying at any reasonable time under reasonable conditions and under custodian's supervision.**
- **Identify any applicable exemptions.**
- **Provide in reasonable time under reasonable circumstances.**

What to give?

- Public records *except what is exempt under law (not an excuse not to give if you have copy of record but you are not official custodian)*
- 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:
 - Records stored in the computer not accessible in existing computer program format
 - Current format does not protect confidential and exempt information
 - Current format does not fairly or meaningfully represent the record
 - Court decides exceptional circumstances exist

How much should it cost?

- **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, Florida Administrative Code. (e.g., public inspection of official ballots, all e-mails from 2002 through 2005, or all original voter registration applications from 1986 through 1996.

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)
- Request opinion from Attorney General's Office regarding a construction or interpretation of a public records provision

Exemptions

Public Records

What are exemptions?

- Created by the Legislature
- Must state specifically the need that justifies the exemption
- 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

What is a records custodian duty?

- **Maintain the confidentiality and exempt status** of your agency public records and those of any other agency document or information that you may have received through the course of official business.
- **Before release or disclosure, REVIEW and REDACT all confidential and/or exempt information/document/material.**
 - Redact only that part that is exempt unless whole document or material is exempt.
 - Do not alter/mark original document/material. Make copy and then redact on copy.
- **Identify the specific statutory exemption you rely upon to redact the information/document/material.**

Examples of Exempt Election/Election-Related Records

Public Records

Voter applicant/registered voter information

- Social security number
- Florida driver's license /state identification number
- Voter registration agency where a person registered to vote or updated his or her voter registration
- Signature [from copying only--may be inspected]
- Whether a person declined to register or update records

Otherwise ALL voter registration information/records is public record (e.g., political party affiliation, addresses, phone numbers, date of birth, and voting history. Section 97.0585, F.S. See also section 119.071(5), F.S.

High-risk professionals classes

- 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 officers,
- Law enforcement officers, corrections officers, probation officer, code enforcement officers,
- Guardians ad litem,

High-risk professionals classes (cont'd)

- Child abuse investigators,
- Certain Department of Juvenile Justice personnel,
- Certified firefighters
- Social services counselors
- Tax collectors
- Inspector general or audit person investigating waste, fraud, abuse

High-risk professional classes (cont'd)

- Most exemptions apply to existing and former
- Exemption may extend to spouse and children
- Exemption lasts forever even if divorce or child is adult. (See sections 119.071(4)(d)1., 119.071(5)(i), Fla. Stat.
- **Home address, telephone number, photo, social security number** (varies according to profession –refer to statute)
- **Not automatic**-Written request is needed to apply exemption to EACH government agency that may have the professional's information

Victims of violence/stalking

- **Domestic violence victims**
 - Name, address, phone number—victims must be *registered* with (Attorney General's Office Address Confidentiality Program (**ACP**) Section 741.465, F.S.
- **Stalking victims**
 - Name, address, phone number—requires victim statement of stalking with Attorney General's Office 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.

Victims of violence/stalking

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

Driver license data

- **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.)

Ballots

- **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.

Vote-by-Mail Request Information

- **Information** collected or received to process a vote-by-mail (formerly 'absentee') ballot request. *Section 101.62(3), F.S.*
- Voting history that reflects someone voted absentee IS NOT exempt from disclosure after election.
- 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 online DS-DE 70/R1S-2.043—Example of electronic format used by State to control access to vote-by-mail ballot info (user id and password provide online access and expire at end of year)*

Campaign Finance Records

- **User identification and passwords held by the Department of State pursuant to electronic filing of solicitation and campaign contributions. 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.**

Security Procedures

- **County minimum security procedures are exempt to the extent they contain:**
 - **Data processing software** either as a trade secret or agency produced data processing software that is sensitive. See sections 119.071(1)(f); 812.081; 101.5607(1)(d), Fla. Stat. (all voting system software filed with state).
 - Software prepared by state is NOT exempt from chapter 119, Fla. Stat.

Security Procedures (cont'd)

- **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, Fla. Stat. 2005). 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.

Continuity of Operations Plan

- Gathered for purposes of emergency coordination for natural and man-made disasters with between statewide-local entities
- Communication/contact information
- Emergency preparedness plans
- Sections 252.365, and 252.905, Fla. Statutes

Records Management

Public Records

Legal Requirements

- **Law requires retention, record-keeping, storage, and disposition** (See section 257.36, Florida Statutes)
- **Oversight by Division of Library and Information Services oversight/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.)

Retention

- **Retention schedule:** Establishes minimum time you must keep public records. If there is no applicable schedule item, you must keep records until specific one is created. *Adhere to the schedule: You cannot produce what you no longer legally have. Corollary: You have to produce what you do still have (even if the retention period has passed or you don't know where the record is.)*
- **Applicable schedule for Election Records: Schedule GS-3**
<http://dlis.dos.state.fl.us/barm/genschedules/gso3.pdf>
(Revised 9/2010 with last update to item #106 in 01/2011)

Categories of Retention Items

- Absentee ballot envelopes
- Ballot inspection certification
- Ballot on demand request records
- Book closing statistics
- Campaign and registration records:
candidates/committees/parties
- Conduct of election reports
- Early voting reports
- Election parameter records
- Election returns
- Election security device records

Categories of Retention Items (cont'd)

- Inactive voter 'lists'
- Mail, undeliverable
- Mental Incompetency records
- Petition (constitutional initiative) balloted/unballoted records
- Petition (municipal recall) records
- Petition signature cards
- Poll watchers records
- Poll workers records
- Precinct and polling place location records
- Provisional ballot voters certificates
- Residential street address list/database

Categories of retention items (cont'd)

- Voter challenge records
- Voter address list maintenance
- Voter registration records
- Voter eligibility case files
- Voter information cards
- Voting equipment records series
- Voting history records
- Voting system overvote/undervote reports
- Voting system security procedures

Unique records

- Unused ballots, forms and other election materials: May be destroyed only upon Department of State's approval (no applicable retention schedule)
 - Section 101.545, Fla. Stat.
- 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

Unique records (cont'd)

- 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.).

Master Record - Paper v. Electronic

- **Master record** may be scanned or electronic copy of original public record
- **Requirements for scanning, imaging, electronic recordkeeping** in Department of State rules(Rules 1B-24, 1B-26.003, F.A.C.)
- **Electronic/scanned version has same force and effect as original** for evidentiary purposes or authentication) (Section 92.29, Fla. Stat.)
- **Applicable to voter registration applications.**
 - See sections 98.461(1), 98.081, F.S. (applies also to registrations removed from the statewide voter registration system)
 - **Disposition/destruction form must state that 'paper records are *duplicates* of electronic records "master record"**

Pending public records request

- If you receive a public records request for records scheduled for upcoming disposition, 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.

Government in the Sunshine

Public Records and Meeting s

Florida Attorney General's Office

- Interprets public records laws and meeting laws
 - <http://www.myflsunshine.com/>
- Publishes 'Government in the Sunshine Manual'
- Offers 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.)
- Issues advisory opinions

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)
- Request advisory opinion from Attorney General's Office regarding a construction or interpretation of a public records provision

Words of Advice

Public Records

Best Practices

- **“Don’t get burned.” (Sometimes you just have to sweat through the public records request)**
- **Acknowledge receipt timely even if it will take time to determine if records exist and/or provide**
- **If record collection/redaction will take time, provide status to requester**
- **Respond to public records request in a reasonable and timely manner.**

Best Practices (cont'd)

- Establish and maintain good records management procedures.
- Ask for clarification or 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

The End

Public Records