

# **PUBLIC RECORDS OVERVIEW 2012**

**Florida Department of Education**

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# SCOPE OF THE PUBLIC RECORDS ACT

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- ✘ Florida's Public Records Act provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- ✘ A right of access is also recognized in Article I, section 24 of the Florida Constitution, which applies to virtually all state and governmental entities including the legislative, executive, and judicial branches of government. The only exceptions are those established by law or by the Constitution.

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**Section 119.011(12), Florida Statutes, defines "public records" 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.**

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- ✘ The Florida Supreme Court has 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.

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- ✘ All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.
  - ✘ Only the Legislature and not the judiciary may exempt attorney-client communications from disclosure.

# ELECTRONIC RECORDS

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- ✘ Email messages made or received by public officers or employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption.
- ✘ The Attorney General has advised that materials placed on an agency's Facebook page presumably would be in connection with official business and thus subject to Chapter 119, Florida Statutes.

# PROVIDING PUBLIC RECORDS

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- ✘ Section 119.07(1)(a), Florida Statutes, provides that “[e]very 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 supervision by the custodian of the public records.”

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- ✘ The Public Records Act requires no showing of purpose or "special interest" as a condition of access to public records. Unless authorized by law, an agency may not ask the requestor to produce identification as a condition to providing public records.

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- ✘ The custodian is not authorized to deny a request to inspect and/or copy public records because of a lack of specifics in the request.

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- ✘ The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests.
  - ✘ The Florida Supreme Court has stated that the only delay in producing records permitted under Chapter 119, Florida Statutes, is the reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.

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- ✘ Nothing in Chapter 119, Florida Statutes, requires that a requesting party make a demand for public records in person or in writing. The requesting party does not need to provide his or her identity.

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- ✘ A custodian is not required to give out *information* from the records of his or her office. For example, the Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town.
  - ✘ The Public Records Act requires that an agency produce nonexempt existing records. An agency is not required to create a new record.

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- ✘ In the absence of express legislative authority, an agency may not refuse to allow public records made or received in the official course of business to be inspected or copied if requested to do so by the maker or sender of the document.

# PENALTIES

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- ✘ A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119.

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- ✘ In addition to judicial remedies, section 119.10(1)(b), Florida Statutes, provides that a public officer who knowingly violates the provisions of section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both.

# ATTORNEY'S FEES

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- ✘ Section 119.12, F. S., provides that if a civil action is filed against an agency to enforce the Public Records Act and the court determines that the agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award against the agency responsible the reasonable costs of enforcement, including attorney's fees.

# ADDITIONAL RESOURCES

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- ✘ Judy Bone, Deputy General Counsel  
[Judy.Bone@fldoe.org](mailto:Judy.Bone@fldoe.org)
- ✘ Office of Attorney General website:  
<http://www.myfloridalegal.com>
- ✘ First Amendment Foundation website:  
<http://www.floridafaf.org>



# **2012 SUNSHINE LAW OVERVIEW**

**Florida Department of Education**

# SCOPE OF THE SUNSHINE LAW

- ✘ Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

# SCOPE OF THE SUNSHINE LAW

There are three basic requirements :

- 1) Meetings of public boards or commissions must be open to the public
- 2) Reasonable notice of such meetings must be given
- 3) Minutes of the meetings must be taken, promptly recorded and open to public inspection

# SCOPE OF THE SUNSHINE LAW

- ✘ Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them.

# SCOPE OF THE SUNSHINE LAW

- ✘ Neither the Legislature nor the courts are subject to the Sunshine Law. There is a constitutional provision that provides access to legislative meetings but it is not as strict as the Sunshine Law. However, if legislators are appointed to serve on a board subject to the Sunshine Law, the legislator members are subject to the same Sunshine Law requirements as the other board members.

# SCOPE OF THE SUNSHINE LAW

- ✘ Only the Legislature can create an exemption to the Sunshine Law (by a 2/3 vote) and allow a board to close a meeting. *Exemptions are narrowly construed.*

# SCOPE OF THE SUNSHINE LAW

- ✘ Board members may not use e-mail or the telephone to conduct a private discussion about board business. Board members may send a “one-way” communication to each other as long as the communication is kept as a public record and there is no response to the communication except at an open public meeting. Accordingly, any “one-way” communications (for example one board member wants to forward an article to the board members for information) should be distributed by the board office so that they can be preserved as public records and ensure that any response to the communication is made only at a public meeting.

# SCOPE OF THE SUNSHINE LAW

- ✘ While a board member is not prohibited from discussing board business with staff or a nonboard member, these individuals cannot be used as a liaison to communicate information between board members.
  - ✘ For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

# BOARD MEETINGS

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- ✘ While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to ban non-disruptive videotaping, tape recording, or photography at public meetings.

# BOARD MEETINGS

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- ✘ Board meetings should be held in buildings that are open to the public. This means that meetings should not be held in private homes or clubs.

# BOARD MEETINGS

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- ✘ The phrase “open to the public” means open to all who choose to attend. Boards are not authorized to exclude some members of the public from public meetings.

# PENALTIES

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- ✘ Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree. An unintentional violation may be prosecuted as a noncriminal infraction resulting in a civil penalty up to \$500.

# PENALTIES

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- ✘ The Sunshine Law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

# PENALTIES

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- ✘ Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law was void *ab initio*.

# PENALTIES

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- ✘ Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the sunshine," the board's decision may stand.

# ADDITIONAL RESOURCES

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1. Judy Bone, Deputy General Counsel:

[Judy.Bone@fldoe.org](mailto:Judy.Bone@fldoe.org)

2. Office of Attorney General website:

<http://www.myfloridalegal.com>

3. Florida First Amendment Foundation website:

<http://www.floridafaf.org>