

2010 Public Records Overview



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A. Scope of Public Records Law

Section 119.011(11), 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.

- **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.**

- **All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.**

- **There is no "unfinished business" exception to the public inspection and copying requirements of the Public Records Act. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, *or* formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an agency.**

- **Although a right of access exists under the Constitution to all three branches of government, the Public Records Act, as a legislative enactment, does not apply to the Legislature or the judiciary.**

- **A "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency" is also subject to the requirements of the Public Records Act.**

- **E-mail 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 from public inspection.**

B. Providing public records

- **The Public Records Act requires no showing of purpose or "special interest" as a condition of access to public records.**

- **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.**

- **A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith.**

- **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.**

- **An agency is not authorized to establish an arbitrary time period during which records may or may not be inspected.**

- **Nothing in Chapter 119, Florida Statutes, requires that a requesting party make a demand for public records in person or in writing.**

- **A custodian is not required to give out *information* from the records of his or her office. 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 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.**

- **An agency may not refuse to allow public records made or received in the normal course of business to be inspected or copied if requested to do so by the maker or sender of the document.**

- **A custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt from inspection.**

- **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. 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. On the other hand, if the records are not made confidential but are simply exempt from the mandatory disclosure requirements in section 119.07(1)(a), Florida Statutes, the agency is not prohibited from disclosing the documents in all circumstances.**

- **The general rule is that records which would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records. If a federal statute requires particular records to be closed and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Article VI, section 2, United States Constitution, the state must keep the records confidential.**

C. Fees

- **Providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law.**

- **Section 119.07(4)(d), Florida Statutes, authorizes the imposition of a special service charge to inspect or copy public records when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency.**

- **If no fee is prescribed elsewhere in the statutes, section 119.07(4)(a)1., Florida Statutes, authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 ½ inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy.**

- **Section 119.07(4)(d), Florida Statutes, states that if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a reasonable service charge based on the cost actually incurred by the agency for such extensive use of information technology resources or personnel.**

D. Penalties

- **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.**

- **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.**

E. Additional Resources

- **Office of Governor Charlie Crist Open Government website: http://www.flgov.com/og_home**
- **Office of Attorney General Bill McCollum website: <http://www.myfloridalegal.com>**
- **First Amendment Foundation website: <http://www.floridafaf.org>**

