



Public Records



Public Records Act

- ▶ Provides the public a right of access to records of state and local governments as well as to records of private entities acting on behalf of government.
- ▶ The public's right to records is a constitutional right.
- ▶ Article I, Section 24(a) of the Florida Constitution states:
 - ▶ "Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf..."
 - ▶ City governments are specifically included within the scope of this provision.



Public Records Act

- ▶ Section 119.011(2), Florida Statutes, defines a public record 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 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.



Public Records Act

- ▶ The State Legislature may create an exemption from the public access requirements in the Public Records Act.
- ▶ Requires a 2/3 vote.
- ▶ There are over 1000 exemptions.
- ▶ Any person who desires to inspect or copy a public record has the right to do so.
- ▶ Any person who has custody of a public record has a duty to disclose the record upon request.
- ▶ Agency may impose reasonable conditions:
 - ▶ May require supervision of the records custodian
 - ▶ May charge a reasonable fee for copying



Public Records Act

- ▶ A fee for a public records request should be limited to the cost associated with the labor and technology required to produce the record.
- ▶ A fee is appropriate where compliance with a request will require extensive use of information technology resources or extensive clerical or supervisory assistance.
 - ▶ A fee can only be based on extensive use of agency resources.
- ▶ The fee must be reasonable and limited to costs actually incurred.
- ▶ An advance payment may be required where a large number of records have been requested.
 - ▶ Production of the records may be made contingent upon payment of the fee.



Public Records Act

- ▶ A public agency may not require a showing of purpose or special interest as a condition of access to public records.
 - ▶ A person's motivation for requesting a record is irrelevant with respect to whether they have a right to the record.
- ▶ Unless authorized by law, a public agency may not ask the requestor to produce identification as a condition of providing public records.
- ▶ A request for public records may not be denied on the grounds that it is not sufficiently specific or is overbroad.
- ▶ A request for public records does not have to be made in person or in writing.



Public Records Act

- ▶ There is no specific time limit in the Public Records Act for compliance with a public records request.
- ▶ The only permissible delay is the reasonable time needed to retrieve the record and redact any portion that is exempt from disclosure. *Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984).
- ▶ The Public Records Act simply requires the production of records.
 - ▶ A records custodian is not required to give out information from records or answers questions with respect to the records.
 - ▶ An agency is not required to create a new record if the record does not already exist at the time of the request.
 - ▶ An agency is not required to convert an existing record into a new format.



Public Records Act

- ▶ Exempt records vs. confidential records:
 - ▶ Both require statutory authorization.
 - ▶ An exempt record is one that the agency is neither required nor prohibited to disclose.
 - ▶ A confidential record is one that is not subject to inspection and that may not be released except to a person authorized by statute.
- ▶ If a requested record is exempt from disclosure, the records custodian must state the basis for the exemption, including the statutory citation.
- ▶ Upon request, the records custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt from inspection.
- ▶ The public agency bears the burden of proving the right to an exemption.



Public Records Act

- ▶ Exemptions to the requirements of the Public Records Act include:
 - ▶ Sealed bids, proposals, or replies received pursuant to a competitive solicitation (becomes public when the agency provides notice of an intended decision or 30 days after the opening of bids).
 - ▶ Work products developed in preparation for collective bargaining negotiations.
 - ▶ Information relating to a private entity's interest in locating or expanding its business activities in connection with an economic incentive agreement (only upon request and only for 12 months).
 - ▶ Bank account and credit/debit card numbers held by a public agency.
 - ▶ Law enforcement resource inventories and emergency response plans.
 - ▶ Certain litigation work product of agency attorneys (only while litigation is pending).



Public Records Act

- ▶ Records that are confidential under Florida law include:
 - ▶ Photographs or video/audio recordings of an autopsy.
 - ▶ 911 records that identify personal information about a person requesting emergency services or reporting an emergency.
 - ▶ EMS records that contain patient examination or treatment information
 - ▶ Work papers and notes related to the internal audit of a unit of local government (becomes public when the audit becomes final).
 - ▶ Trade secretes or proprietary confidential business information held by an economic development agency.
 - ▶ Personal identifying information related to a public employee's participation in an Employer Assistance Program.
 - ▶ Social Security numbers held by a public agency.



Public Records Act

- ▶ If a requested record contains both exempt and non-exempt information, the public agency must redact out the exempt information and produce the remainder of the record.
- ▶ The agency may charge a fee if review and redaction will require extensive use of agency resources.
- ▶ Public records, whether exempt or non-exempt, must be retained in accordance with retention schedules approved by the Department of State.



Public Records Act

- ▶ Denial of a person's right to inspect or copy public records creates a civil cause of action against the agency.
 - ▶ A prevailing party may receive reasonable costs of enforcement, including attorney's fees.
- ▶ A public officer who knowingly violates the provisions of the Public Records Act is subject to suspension, removal, or impeachment and is guilty of a misdemeanor of the first degree, punishable by up to one year in prison and/or a fine of up to \$1,000.



Public Records Act

- ▶ Office of Attorney General website:
 - ▶ <http://www.myfloridalegal.com>
- ▶ 2015 Government in the Sunshine Manual:
 - ▶ [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9UPM53/\\$file/2015SunshineLawManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9UPM53/$file/2015SunshineLawManual.pdf)
- ▶ Florida First Amendment Foundation:
 - ▶ <http://www.floridafaf.org>