

# THE FLORIDA PUBLIC RECORDS LAW

CHAPTER 119, F.S.

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# PUBLIC RECORDS

- “Public records” means all documents... 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.
- “Agency” means any, “municipal officer, department, division, board.... and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of a public agency.”



# COMPUTER RECORDS AND EMAIL

- Information stored in a public agency's computer "is as much a public record as a written page in a book or tabulation in a file stored in a filing cabinet."
- Email messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption from public inspection.
- **EXCEPTION** - Private emails stored in government computers do not automatically become a public record simply by virtue of that storage.



# TRANSITORY MESSAGES

- Transitory messages are messages of short-term value based upon the content or purpose of the message, *not* the format used to transmit it (i.e. reminders, event notices, etc...).
- Transitory messages are not intended to formalize or perpetuate knowledge, do not set policy, establish guidelines, confirm a transaction or act as a receipt.
- Retain until obsolete, superseded or administrative value is lost.



# RECORDS RETENTION

- All public records must be maintained in accordance with the appropriate retention schedule established by the Florida Division of Library and Information Services.
- See General Records Schedule GS1-SL for State and Local Government Agencies.
  - Minimum retention periods
  - Maintain copies until obsolete, superseded or administrative value lost (“OSA”), unless otherwise provided.
  - Records Disposition Document recommended by State – Maintain as a permanent record
  - Pending or threatened litigation imposes preservation obligation



# WHO IS AUTHORIZED TO INSPECT PUBLIC RECORDS?

- **ANYONE!** Section 119.01, F.S.
- No “legitimate need” or “special purpose” requirement.



# WHO RESPONDS TO PUBLIC RECORDS REQUESTS?

- “Custodian of public records” mean “the elected or appointed state, county or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.” (i.e. Clerk)



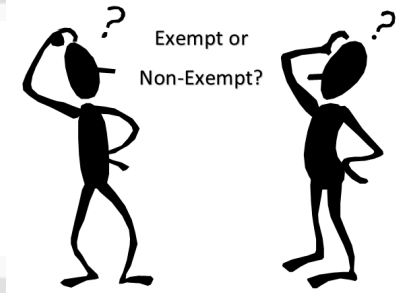
# WHEN MUST AN AGENCY RESPOND TO A PUBLIC RECORDS REQUEST?



- Custodian of records must promptly acknowledge request and respond in good faith.
- No statutory time to respond, but custodian must make reasonable efforts to do so.

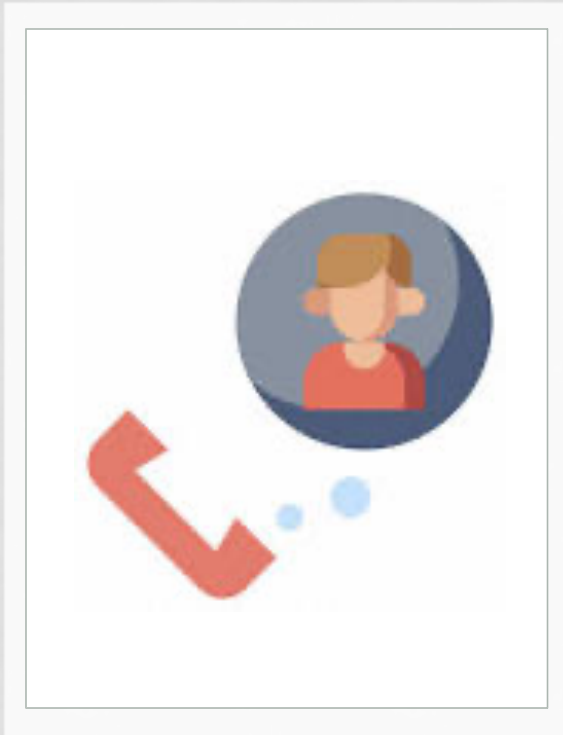


# EXEMPTIONS



- See Section 119.071, F.S.
- The Public Records Law is liberally construed in favor of open government
- Exemptions = Narrowly construed
- Burden is on the agency to illustrate why a record falls within the statutory exemption

# CAN I REQUEST PUBLIC DOCUMENTS OVER THE TELEPHONE AND DO I HAVE TO TELL WHY I WANT THEM?



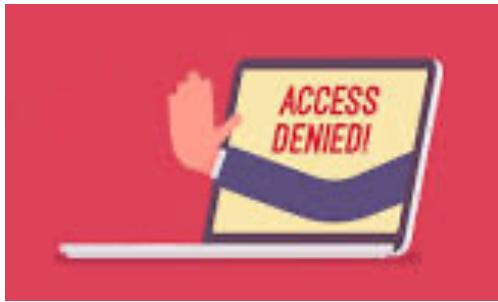
- Nothing in the public records law requires that a request for public records be in writing or in person, although individuals may wish to make their request in writing to ensure they have an accurate record of what they requested.
- Unless otherwise exempted, a custodian of public records must honor a request for records, whether it is made in person, over the telephone, or in writing, provided the required fees are paid. In addition, nothing in the law requires the requestor to disclose the reason for the request.

# HOW MUCH CAN AN AGENCY CHARGE FOR PUBLIC DOCUMENTS?



- The law provides that the custodian shall furnish a copy of public records upon payment of the fee prescribed by law.
- If no fee is prescribed, an agency is normally allowed to charge up to 15 cents per one-sided copy for copies that are 14" x 8 1/2" or less.
- A charge of up to \$1 per copy may be assessed for a certified copy of a public record.
- If the nature and volume of the records to be copied requires 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 actual cost incurred.

# DOES AN AGENCY HAVE TO EXPLAIN WHY IT DENIES ACCESS TO PUBLIC RECORDS?



- A custodian of a public record who contends that the record or part of a record is exempt from inspection must state the basis for that exemption, including the statutory citation.
- Additionally, when asked, the custodian must state in writing the reasons for concluding the record is exempt.

# WHEN DOES A DOCUMENT SENT TO A PUBLIC AGENCY BECOME A PUBLIC DOCUMENT?



As soon as a document is received by a public agency, it becomes a public record, unless there is a legislatively created exemption which makes it confidential and not subject to disclosure.

# ARE PUBLIC EMPLOYEE PERSONNEL RECORDS CONSIDERED PUBLIC RECORDS?



- The rule on personnel records is the same as for other public documents... unless the Legislature has specifically exempted an agency's personnel records or authorized the agency to adopt rules limiting public access to the records, personnel records are open to public inspection.
- There are, however, numerous statutory exemptions that apply to personnel records.

CAN AN AGENCY REFUSE TO  
ALLOW PUBLIC RECORDS  
TO BE INSPECTED OR  
COPIED IF REQUESTED TO  
DO SO BY THE MAKER OR  
SENDER OF THE  
DOCUMENTS?



No. To allow the maker or sender of documents to dictate the circumstances under which documents are deemed confidential, would permit private parties instead of the Legislature, to determine which public records are public and which are not.

IS AN AGENCY REQUIRED TO  
GIVE OUT INFORMATION  
FROM PUBLIC RECORDS OR  
PRODUCE PUBLIC RECORDS  
IN A PARTICULAR FORM AS  
REQUESTED BY AN  
INDIVIDUAL?



- The Sunshine Law provides for a right of access to inspect and copy existing public records.
- The Sunshine Law does not mandate that the custodian give out information from the records nor does it mandate that an agency create new records to accommodate a request for information.





# QUESTION #1

- 1. The Police Department has received a request for a report prepared by the Department on a recently closed investigation. The report includes both public and confidential information.**

**Which of the following statements is correct?**

- A. Since the report contains both public and confidential information, the Department should refuse to produce the entire document.
- B. To prevent delay and comply with the law, the Department may simply release and post on its website the entire unredacted document if it believes that it would be in the public interest to do so.
- C. The Department must redact the confidential material and then release the remainder for public inspection without destroying any portion of the original document.
- D. In order to make it easier in the future to respond to public records requests for this document, the Department may permanently remove the confidential material from the original document.

## QUESTION #2

2. **A Mayor has received a public records request for her text messages with her husband, which were communicated during city commission meeting from her personal phone. Which of the following are true regarding the text messages?**
- A. The Mayor's text messages on her personal phone may be a public record subject to the disclosure requirements of the Public Records Law.
  - B. A private communication by the Mayor with her husband during a city commission meeting falls outside of the definition of a public record subject to disclosure requirements of the Public Records Law.
  - C. Text messages from the Mayor became public records subject to disclosure requirements of the Public Records Law when they were sent during a city commission meeting.
  - D. A and B are correct.
  - E. A, B and C are correct.

## QUESTION #3

- 3. A city Fire Department receives a public records request for photographs of an accident scene from a closed accident investigation. There is no statutory exemption that applies to the photographs. Which of the following statements is correct?**
- A. The department is not required to release the photographs because the public records law does not apply to photographs.
  - B. Unless the City Commission instructs the Department not to release them, the Department must release the photographs.
  - C. The Department must release the photographs.
  - D. Unless release of the photographs would violate accepted fire rescue standards and procedures, the Department must release the photographs.

## QUESTION #4

4. During a City Commission meeting on solid waste, a city Public Works Director is sent an email complaining about rising cost of garbage collection from a resident who happens to be the Director's mother. Their mother in all caps states in the email: DO NOT SHARE.

**Which of the following statements is correct?**

- A. Because the email specified not to share and came from their mother, the Director should delete it.
- B. The email is a public record and must be provided in response to the public records request although the Director's mother requested that it not be shared.
- C. The email is a public record because it is a complaint made by the public, notwithstanding it is the Director's mother.
- D. Because the mother requested the email not be shared, the email should be placed in personal folder and the City should not produce it in response to the public records request.

## QUESTION #5

5. A city clerk has received over 200 public records requests over the past year from John Q. Public. Each of the public records requests asks for records relating to each Commissioner's schedule and emails. Public is rude and uses foul language when he comes to city hall to make his requests. Which of the following options is available to the clerk?
- A. Because Public has made numerous public records requests which all relate to Commissioner's schedules and emails, he can be charged with stalking.
  - B. Because Public is rude and uses foul language, the clerk would be authorized require him to make his requests in writing or over the telephone.
  - C. Because Public has asked for an extraordinary number of records, the city clerk would be authorized to ask him to specify the particular records that he wants.
  - D. None of the above.



Questions

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Answers

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