THE FLORIDA PUBLIC RECORDS LAW

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Public Records

Chapter 119, F.S.

"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."

Florida Supreme Court:

"Perpetuate, communicate, or formalize knowledge."

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 addresses and 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.

SOCIAL MEDIA & TEXT MESSAGES

The Florida Attorney General's Office has provided that there is a presumption that the placement of material on a City's Facebook page would be in connection with the transaction of official business and subject to Ch. 119, F.S.

Public posts relating to City business on social media are subject to the requirements Ch. 119, F.S.

Cell phone text messages can create electronic written public records subject to disclosure.

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Retain until obsolete, superseded or administrative value is lost.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- Maintain copies until obsolete, superseded or administrative value lost ("OSA"), unless otherwise provided.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?

Section 119.01(1), F.S.

"It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person."

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 receipt of 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