

Public Records – Municipalities and Public Agencies

All **highlighted** denotes graphic insert. Descriptions are found at the bottom of the paragraph.

The Florida Supreme Court has determined that public records are all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. They are not limited to traditional written documents. **Tapes, photographs, films, sound recordings, and computer records** are also considered public records subject to inspection unless a statutory exemption exists.

- Central text “Public Records” Images of listed items appear as spoken

An agency may not impose its own restrictions on access to or copying of public records. Every 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. A custodian of public records may not impose a rule or condition of inspection which operates to restrict or circumvent a person's right of access. A policy of a governmental agency cannot exempt it from the application of Ch. 119 of the Florida Statutes.

Chapter 119 provides that “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person.” A public employee is a person within the meaning of Ch. 119, F.S. and, as such, possesses the same right of inspection as any other person. The legislative objective underlying the creation of chapter 119 was to insure to the people of Florida the right freely to gain access to governmental records. The purpose for requesting public records is immaterial.

- Florida Seal upper left, Chapter 119 Centered, Quote below

Chapter 119 does not authorize an agency to require that requests for records must be in person or in writing. It does not matter if the request is in writing, over the telephone, or in person, provided that the required fees are paid. Additionally, a person requesting access to or copies of public records may not be required to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records. For example, **the agency that furnishes a motor vehicle or vessel registration record is required by statute to record the name and address of the person, other than a representative of a law enforcement agency, who requests and receives information from a motor vehicle or vessel registration record.** The agency is also required to record the name and address of the person who is the subject of the inquiry or other information identifying the entity about which information is requested.

- Video of someone signing name to view public records with the above agency

A public agency may maintain a record of public records requests made to the agency. However, as noted, the person requesting records cannot be required to disclose identifying information nor can the agency require the requestor to fill out such a form or documentation.

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records" provided that the required fees are paid. However, 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.

In other words, Ch. 119 provides a right of access to inspect and copy an agency's existing public records; it does not mandate that an agency create new records, or reformat its records to provide them in a particular form, in order to accommodate a request for information from the agency. For example, the clerk of court is not required to create a list of documents from a case file in response to an inmate's request if such a list does not exist. However, an agency must respond to requests for information as to copying costs. Additionally, the mandate that an agency produce all non-exempt documents in its custody that are responsive to the request applies only to those documents in the custody of the agency at the time of the request; nothing in the Public Records law appears to require that an agency respond to a so-called "standing" request for production of public records it may receive in the future.

The Public Records Act does not contain a specific time limit for compliance with public records requests. The Florida Supreme Court has stated that the only delay in producing records permitted under Ch. 119 "is the **limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.**" An agency's unreasonable and excessive delays in producing public records can constitute an unlawful refusal to provide access to public records.

- **Florida Seal upper left, Chapter 119 Centered, Quote below**

While an agency may restrict the hours during which public records may be inspected to those hours when the agency is open to the public, a custodian is not authorized to establish an arbitrary time period during which records may or may not be inspected. For example, an agency policy which permits inspection of its public records only from 1:00 p.m. to 4:30 p.m., Monday through Friday, violates the Public Records Act. There may be instances where, due to the nature or volume of the records requested, a delay based upon the physical obstacles in retrieving the records and protecting them is necessary; however, the adoption of a schedule in which public records may be viewed only during certain hours is impermissible.

An agency may not allow the maker or sender of documents to dictate the circumstances under which the documents are confidential. The only entity that has the authority to exempt public records from disclosure is the Legislature.

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. Also, upon request, the custodian must state in writing the reasons for the conclusion that the record is exempt. Where a public record contains some information which is exempt from disclosure, Chapter 119 requires the custodian of the document to redact only that portion of the record which is exempt and provide the remainder of the record for examination.

A public officer who knowingly violates the provisions of Florida's public records law is subject to suspension and removal or impeachment and commits a first-degree misdemeanor punishable by a fine of up to \$1,000 and a jail term not to exceed one year. An unintentional violation is a non-criminal infraction, punishable by a fine up to \$500. Attorney's fees and court costs are available to the requestor that prevails in a civil suit for access.

The state attorney's office has the statutory authority to pursue criminal charges against a public official for violations of the public records law, including those violations which may result in a finding of a non-criminal infraction. A person who has been denied the right to inspect or copy public records may also bring a civil action against the agency to enforce the terms of the Public Records Law. Actions brought under the Public Records Law are entitled to an immediate hearing and should take priority over other pending cases.

The Office of the Attorney General has a voluntary mediation program available as an alternative for resolution of open government disputes. You can call the Attorney General's Office for mediation at 850-245-0140 or visit our website at www.myfloridalegal.com.

- Florida Seal Centered, Office of the Attorney General's contact info including website.

Open government isn't just good government- it's the public's right.