

Agency employees' responsibility to provide records

Number: INFORMAL

Date: December 14, 2005

Subject:

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The Honorable Chris Smith
House Democratic Leader, District 93
603 N.W. 7th Terrace
Fort Lauderdale, Florida 33311-7310

The Honorable Shelley Vana
Representative, District 85
1280 N. Congress Avenue, Suite 100
West Palm Beach, Florida 33409-6377

Dear Representatives Smith and Vana:

This is in response to your recent letter in which you ask for legal advice concerning the responsibility of employees within an agency to provide public records.

You state that you are requesting guidance pursuant to section 16.01(3), Florida Statutes, which provides for the issuance of advisory opinions to listed officials who request legal advice "on any question of law relating to the official duties of the requesting officer." You also attach an excerpt from the Government in the Sunshine Manual relating to payment of attorney's fees in the event that a court finds a denial of access of public records.

Section 119.07(1)(a), Florida Statutes, provides that "[e]very 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." Section 119.011(5), Florida Statutes, defines the term "custodian of public records" to 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."

The courts, however, have stated that the statutory reference to the records custodian does not alter the "duty of disclosure" imposed by section 119.07(1) on every person who has custody of a public record.[1] As the Fourth District Court of Appeal noted in *Mintus v. City of West Palm Beach*,[2] in order to have custody of a public record, one must have supervision and control over the document or have legal responsibility for its care, keeping, or guardianship. The court held that the "mere fact that an employee of a public agency temporarily possesses a document does not necessarily mean that the person has custody as defined by section 119.07. "[3]

With regard to your concern that a requestor should not have to file a "speculative lawsuit" if he or she believes that an agency's response was inaccurate, the current framework in the Public

Records Act provides remedies for violations of the statute's terms, including the ability of a citizen to bring a civil action.[4] In addition, as you are aware, the Legislature has authorized the establishment of an informal mediation program which is located within the Attorney General's Office as an alternative for the resolution of open government disputes.[5]

Sincerely

Charlie Crist
Attorney General

CC/tfl

[1] See *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996).

[2] 711 So. 2d 1359, 1361 (Fla. 4th DCA 1998). In *Mintus*, the plaintiff had requested a police officer to provide him with a copy of a document which the officer had in his possession relative to an internal affairs investigation. The document was not provided to the plaintiff, and the plaintiff filed a petition for mandamus to compel production of the document, asserting that a public document had been wrongfully withheld. The trial court had held that the officer to whom the plaintiff had made his request was not a person who had custody of a public record within the meaning of the Public Records Law, as he had mere temporary possession of the document for an internal affairs hearing. The district court affirmed on the grounds that the person from whom the plaintiff sought production of the document was not a person in custody of that document under statute.

[3] *Id.*

[4] See, e.g., ss. 119.10 and 119.11, Fla. Stat.

[5] See s. 16.60, Fla. Stat.