

Records, county procedures for providing copies

Number: INFORMAL

Date: December 17, 2003

Subject:

Records, county procedures for providing copies

The Honorable Leon Nettles
Wakulla County Commissioner
467 Old Magnolia Road
Crawfordville, Florida 32327

Dear Mr. Nettles:

Thank you for considering this office as a source of assistance regarding the requirements of Florida's Public Records Law.

While this office is precluded from formally opining on this matter in the absence of a request from a majority of the members of the county commission, the following comments are offered in an effort to be of some assistance.[1]

Section 119.07(1)(a), Florida Statutes, establishes a right of access to public records in plain and unequivocal terms by stating that "[e]very person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, *at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.*" (e.s.) The term "reasonable conditions" does not include anything that would hamper or frustrate, either directly or indirectly, a person's right of inspection and copying. The term "refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review." [2]

As discussed in the Government in the Sunshine Manual, Chapter 119, Florida Statutes, does not authorize an agency to require that requests for records be in writing.[3] This office has suggested that if a public agency believes that it is necessary to provide written documentation of a request for public records, the agency may require the custodian to complete an appropriate form or document; however, the person requesting the record cannot be required to provide such documentation as a precondition to obtaining access to public records.[4]

In addition, the courts have stated that the only delay in producing records permitted under the Public Records Law is the reasonable time for the custodian to retrieve the record and delete those portions of the record the custodian asserts are confidential or exempt, if any.[5] This office has therefore stated that a procedure that provides for an automatic delay in the production of records is impermissible. In Attorney General Opinion 96-55, this office stated that a procedure whereby access to public records was delayed until the board of trustees met to

vote on whether or not to release the records appeared to be contrary to the provisions of Chapter 119, Florida Statutes.[6]

You may wish to discuss these issue with the county attorney. I hope, however, that the above informal advisory comments will be of assistance. Thank you for contacting this office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See this office's Statement Concerning Attorney General Opinions, available on this office's website at: <http://myfloridalegal.com> stating that opinions may be issued to public officials on questions involving the requesting official's own duties under state law and requests from a board (or board member) should clearly indicate that the request has been made by a majority of the members of that body.

[2] *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979). See also *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S. Ct. 2315 (1985).

[3] See Government in the Sunshine Manual, 2003 edition, p. 106; and see *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 305 n.1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that requests for records must be in writing"); Op. Att'y Gen. Fla. 80-57 (1980) (custodian must honor a request for copies of records which is sufficient to identify record desired, whether request is in writing, over the telephone, or in person, provided that the required fees are paid).

[4] See Government in the Sunshine Manual, *supra* at 106. And see *Sullivan v. City of New Port Richey*, No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 1987), *per curiam affirmed*, 529 So. 2d 1124 (Fla. 2d DCA 1988), noting that a requestor's failure to complete a city form required for access to documents did not authorize the custodian to refuse to honor the request to inspect or copy public records.

[5] See, e.g., *Tribune Company v. Cannella*, *supra*.

[6] And see *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985); *Tribune Company v. Cannella*, *supra*.