

Records, handwritten notes used at workshop meeting

Number: INFORMAL

Date: December 31, 1998

Subject:

Records, handwritten notes used at workshop meeting

Ms. Suzanne M. McLean
Town Attorney of Davie
Post Office Box 8549
Pembroke Pines, Florida 33084-0549

RE: PUBLIC RECORDS--MUNICIPALITIES--handwritten reference notes used at workshop meeting are public records. s. 119.011, Fla. Stat., and Art. I, s. 24, Fla. Const.

Dear Ms. McLean:

On behalf of the Town of Davie you ask whether handwritten notes are a public record if they are prepared by a council member regarding research on a matter under consideration by the council.

In sum, handwritten notes prepared by a council member regarding research on a matter under consideration by the council and used at a workshop meeting as a reference in discussing the member's position are public records.

You state that a request has been made for the handwritten notes and research prepared by a town council member in anticipation of a council workshop meeting to discuss emergency medical services. The notes were prepared to document communications between the council member and officials from other municipalities regarding emergency medical services and collection rates in various municipalities. The council member brought the notes to the workshop and used them as a reference to represent her position on the matter, specifically citing to factual material contained therein. During the meeting the member stated that she had conducted a study and discussed her conclusions based upon such study, referring to her handwritten notes as containing information upon which she based her conclusions. Further, the member distributed a document entitled "Transport Revenues" that was generated from the information contained in a portion of the notes.

You have provided a copy of your memorandum in which you conclude that the handwritten notes are public records. In light of your firsthand knowledge of the situation and the manner in which the notes were used, this office agrees with the conclusion you have reached. The following discussion provides support for finding that handwritten notes are public records when prepared and used in the manner you have described.

Florida's Public Records Law, Chapter 119, Florida Statutes, requires that records made or received in connection with the transaction of official business by any public body, officer or

employee of the state, county, or municipality shall be open to public inspection and copying, unless there is a legislatively created exemption making such records confidential or exempt from disclosure.[1] Section 119.011(1), Florida Statutes, defines "Public records" to include

"all documents, papers, letters . . . or other material, regardless of 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."

Initially, I would note that any portion of the handwritten notes that were not made or received in the official course of business would not be public records. It is well settled, however, that if the purpose of a document prepared in connection with official business is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of the agency.[2] Moreover, nonfinal documents need not be communicated to anyone in order to constitute a public record.[3]

In this instance, the council member's use of the notes during the workshop meeting as a reference to discuss her position on the matter would indicate that the notes were prepared in order to perpetuate or formalize the knowledge that she had gained through her independent study. While the council member may not have referred to every detail in her notes during her presentation, she brought the notes to the meeting and had the formalized knowledge contained therein readily available for reference. Thus, it would appear that the notes are public records available for inspection.

In *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*,[4] the Supreme Court of Florida contrasted public records with materials prepared as drafts or notes, which are mere "precursors" of governmental records not intended to be final evidence of the knowledge recorded. Reinforcing the decision in *Byron, Harless*, the Court in *State v. Kokal*, determined that certain trial preparation materials by state agency attorneys described as preliminary guides intended to aid the attorneys when they later formalized the knowledge were not public records subject to disclosure.[5] The materials considered in *Kokal*, however, were personal notes by state agency attorneys to themselves, characterized as "*preliminary* guides intended to aid the attorneys when they later formalized the knowledge." [6] In contrast, the notes prepared and used by the council member represented the end product of her study and were the formalized knowledge that was used as a reference in the workshop meeting.

Accordingly, handwritten notes prepared by a council member regarding research on a matter under consideration by the council are public records when those notes are made to perpetuate and formalize knowledge and are used as a reference during the council's discussion on the matter.

Given the council member distributed a document that was generated from information contained in a portion of the notes, you question whether that portion of the notes reflected in the document would not be a public record. As discussed above, the formalization of the knowledge in the notes in order to perpetuate it and use it as a reference for discussion at the workshop meeting is the key to its status as a public record. Any other use of the notes would not appear to alter this characterization. In contrast, it is only uncirculated materials which are merely preliminary or precursors to future documents, and which are not in and of themselves intended

to serve as final evidence of the knowledge to be recorded, which fall outside the definition of a public record.[7]

In light of the conclusion that these handwritten notes represent formalized knowledge and are public records, it is my opinion that the use of portions of the notes to generate another document to be distributed to other members of the council does not create an exception from the Public Records Law for such portions of the notes.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] See *also* Art. I, s. 24, Fla. Const., establishing a right of access to any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.

[2] See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980). See *also*, *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4th DCA 1977), *cert. denied*, 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department was a public record); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976) (working papers used in preparing a college budget were public records); and *State ex rel. Copeland v. Cartwright*, 38 Fla. Supp. 6 (Fla. 17th Cir. Ct. 1972), *affirmed*, 282 So. 2d 45 (Fla. 4th DCA 1973) (site plan review prepared for public building project must be open for public inspection, even though it was a preliminary working paper).

[3] See, e.g., *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (drafts and notes of an autopsy performed by the medical examiner are public records); *Florida Sugar Cane League v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (handwritten notes of agency staff "utilized to communicate and formulate knowledge within [the agency], are public records subject to no exemption"); and Inf. Op. to Michael S. Davis, March 16, 1992, in which this office advised that a personnel director's retention of notes which were originally handwritten, but were subsequently typed and kept by the director in his office for two years, "might well be construed by a court as evidence of the director's intent to perpetuate the information contained therein."

[4] 379 So. 2d 633 (Fla. 1980).

[5] 562 So. 2d 324 (Fla. 1990).

[6] *Id.* at 327.

[7] See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, *supra*.