

Public Records, public inspection of records

Number: INFORMAL

Date: January 31, 2003

Subject:
Public Records, public inspection of records

Ms. Christina L. Riotte
McDermott, Will & Emery
Miami Center
201 South Biscayne Boulevard
22nd Floor
Miami, Florida 33131-4336

Dear Ms. Riotte:

This office has reviewed the revised policy of the Broward County Environmental Quality Control Board to permit inspection of its public records from 1:00 p.m. to 4:30 p.m., Monday through Friday.

Such a policy, in our opinion, violates the purpose and intent of the Public Records Law, Ch. 119, Fla. Stat., which states that it is the policy of this state that public records "shall at all times be open for a personal inspection by any person." [1] While s. 119.07(1)(a), Fla. Stat., in providing for the public's right to inspect and copy the records of public agencies refers to reasonable times and under reasonable conditions, such provision does not permit an agency to set an arbitrary time period during which records may or may not be inspected.

As The Supreme Court of Florida stated in *Tribune Company v. Cannella*: [2]

"[T]he legislative scheme of the Public Records Act has preempted the law relating to any delay in producing records for inspection. The only delay permitted by the Act is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." [3]

Thus, the Court in *Cannella* struck down a policy of a municipality which provided an automatic delay in releasing public records, stating that "an automatic delay, no matter how short, impermissibly interferes with the public's right, restrained only by the physical problems involved in retrieving the records and protecting them, to examine the records." [4]

The placing of an arbitrary time period in which the public may inspect records would similarly appear to violate the legislative scheme of Ch. 119, Fla. Stat., discuss in *Cannella*. There may be instances where, due to the nature or volume of the records requested, a delay based upon the physical problems in retrieving the records and protecting them is necessary. However, the adoption of a schedule in which public records may be viewed during only certain hours would clearly appear to be impermissible.

The mandate of Ch. 119, Fla. Stat., and the decisions of the courts of this state are clear that the public's right of access to public records may not be arbitrarily delayed. I therefore, strongly urge the Broward County Environmental Quality Control Board to reconsider its policy on this matter. Unless the board is willing to revise its policy to comply with the mandate of Ch. 119, Fla. Stat., this office will have no alternative but to take appropriate action by representing the public's interests before the courts.

Sincerely,

Mitchell D. Franks
Deputy Attorney General

MDF/tgk

[1] Section 119.01(1), Fla. Stat.

[2] 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, Deperte v. Tribune Company, 105 S.Ct. 2315 (1985).

[3] *Id.* at 1079.

[4] *Id.*