

OPEN GOVERNMENT OVERVIEW: June 15, 2016

Florida Government Finance Officers
Association



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SUNSHINE LAW

- Florida's Government in the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. In the absence of statutory exemption, it applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

Scope of the Sunshine Law

- Board members may not engage in private discussions with each other about board business, either in person or by telephoning, emailing, texting or any other type of electronic communication (i.e. Facebook, blogs).

Scope of the Sunshine Law

- While an individual board member is not prohibited from discussing board business with staff or a nonboard member, these individuals may not be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

SCOPE OF THE SUNSHINE LAW

There are three basic requirements:

- 1) Meetings of public boards or commissions must be open to the public
- 2) Reasonable notice of such meetings must be provided; and
- 3) Minutes of the meetings must be prepared and open to public inspection.

SCOPE OF THE SUNSHINE LAW

- The Sunshine Law applies to advisory boards created pursuant to law or ordinance or otherwise established by public agencies or officials.

Scope of the Sunshine Law

- Staff meetings are not normally subject to the Sunshine Law.
- However, staff committees may be subject to the Sunshine Law if they are deemed to be part of the “decision making process” as opposed to traditional staff functions like factfinding or information gathering.

Scope of the Sunshine Law

- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote).
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

Board meetings

- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

Board meetings

- Section 286.0114, F.S., provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from “maintaining orderly conduct or proper decorum in a public meeting.”

Penalties

- Civil action
 - Action taken in violation of the Sunshine Law may be invalidated.
- Criminal penalties
- Suspension or removal from office

PUBLIC RECORDS LAW

- Florida's Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption.

The term “public records” means:

- a) All “documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics, or means of transmission” **(includes electronic communications like text messages, emails)**.
- b) Made or received pursuant to law or ordinance or in connection with the transaction of official business
- c) By any agency [including a private entity acting ‘on behalf of’ a public agency]
- d) Which are used to perpetuate, communicate, or formalize knowledge

Statutory Exemptions

- Difference between “exempt” and “confidential” records
- Exemptions applicable to financial records (partial listing)
 - Credit card, debit card and bank account numbers
 - Sealed bids
 - Trade secrets
 - Certain economic development records

PROVIDING PUBLIC RECORDS

- a) Public records cannot be withheld at the request of the sender
- b) A requestor is not required to show a “legitimate” or “noncommercial interest” as a condition of access
- c) A request cannot be denied because it is “overbroad”
- d) Unless authorized by another statute, an agency may not require that public records requests be in writing or require the requestor to identify himself or herself

PROVIDING PUBLIC RECORDS

- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days).
- The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.

PROVIDING PUBLIC RECORDS

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- An agency is not required to create a new record

PROVIDING PUBLIC RECORDS

- Chapter 119 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An additional 5 cents may be charged for two-sided copies. For other copies, the charge is the actual cost of duplication of the record. Actual cost of duplication means the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost.

Fees

- In addition to the actual cost of duplication, an agency may impose a reasonable service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.



Retention

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained.

Penalties for noncompliance

- a) Criminal penalties
- b) Civil action
- c) Attorney's fees

Review Questions

- **I. The Sunshine Law applies to:**
 - **A. Leon County School Board**
 - **B. National Association of State Departments of Agriculture**
 - **C. Florida House of Representatives**
 - **D. All of the above**

Review Questions

- **2. The three basic requirements of the Sunshine Law are:**
 - **A. Meetings must be open to the public, noticed to the public and minutes promptly prepared**
 - **B. Meetings must be open to the public, noticed to the public and an agenda prepared**
 - **C. Meetings must be open to the public, minutes promptly prepared, and computers provided for public use**
 - **D. Meetings must be open to the public, noticed to the public and noticed to the press**

Review Questions

- **3. If a city council believes that it is in the public interest, which of the following meetings may be closed?**
- **A. Meetings to discuss sensitive personnel issues involving rumors of after hours parties held in city hall**
- **B. Meetings to discuss an ongoing investigation of a city department**
- **C. A hearing on a complaint alleging that a city resident has violated the building code**
- **D. None of the above**

Review Questions

- **4. Two county commissioners are talking to each other at a football game. A reporter is with the commissioners and able to hear the entire conversation. The commissioners:**
- **A. Have not violated the Sunshine Law because even if they were discussing commission business, the meeting was public because a newspaper reporter was present.**
- **B. Have violated the Sunshine Law if they talked about matters that foreseeably could come before the commission for discussion or action.**
- **C. Have violated the Sunshine Law if they were talking about commission matters that have been scheduled for a vote by the commission.**
- **D. Both B and C are correct.**

Review Questions

- **5. A Florida State Fair Authority member meets privately with another member of the authority to discuss a contract which is under consideration by the authority. Which of the following is true?**
- **A. The State Attorney could charge the authority members with a noncriminal infraction for violating the Sunshine Law.**
- **B. The Attorney General could charge the authority members with a noncriminal infraction for violating the Sunshine Law.**
- **C. The Florida Ethics Commission could charge the authority members with violating the Sunshine Law.**
- **D. All of the above.**

Review Questions

- **6. A city clerk wants to send an email from his personal computer to a city councilmember about an item on the council agenda. Which statement is correct?**
- **A. The email is a public record**
- **B. The email is not a public record because personal emails are not subject to the public records law.**
- **C. The email is not a public record but the councilmember should not respond to the email because the response would violate the Sunshine Law.**
- **D. The email is a public record but the councilmember should not respond because the response would violate the Sunshine Law.**

Review Questions

- **7. The city commission has met at 10 a.m. on the first Monday of the month for years. Due to a clerical error, the notice for the board's last meeting did not appear in the newspaper, city website or at city hall as usual. However, since city residents know that the commission always meets on the first Monday, members of the public were in attendance at the meeting. The notice error was not discovered until after the commission met and approved an action. No one from the public has objected to the action's approval. Which of the following is correct?**

Review Questions

- **A. Since the notice error was inadvertent and no one objected, the commission did not violate the Sunshine Law and the action to approve the item is valid.**
- **B. Although the commission technically violated the Sunshine Law because the meeting was not noticed, since the error was inadvertent and no one objected, the commission may simply ratify the item approval without discussion at the next scheduled meeting.**
- **C. Because the meeting was not properly noticed to the public, the commission violated the Sunshine Law and must hold a full and open discussion of the item at its next meeting; otherwise a judge could rule that the approval of the item is invalid.**
- **D. Even though the meeting was not properly noticed to the public the meeting did not violate the Sunshine Law since members of the public were in attendance.**

Review Questions

- 8. The Department of Children and Families has received a request for a report prepared by the chief inspector general that reviewed whether the agency had acted properly in its care of a foster child. The report includes both public and confidential information. Which of the following statements is correct?

Review Questions

- **A. Since the report contains both public and confidential information, the Department should refuse to produce the entire document.**
- **B. If it would be burdensome to redact confidential information, the Department may simply release the entire unredacted document if it believes that it would be in the public interest to do so.**
- **C. In order to make it easier in the future to respond to public records requests, the Department may permanently destroy or obliterate the confidential material from the original document.**
- **D. The agency must redact the confidential material and then release the remainder for public inspection without destroying any portion of the original document.**

Review Questions

- **9. A mayor has received a public records request for her emails. Which of the following emails are public records?**
- **A. Email messages from the mayor that are sent from her personal home computer in which the mayor explains to the city manager why she believes that city hall must be renovated.**
- **B. Email messages from the mayor that are sent from her personal home computer in which the mayor asks her brother whether he would like to accompany the mayor and her family on vacation.**
- **C. Email messages from the mayor that are sent from her government computer in which the mayor asks her father whether he would like to accompany her and their family on their annual vacation.**
- **D. A and C are correct.**

Review Questions

- **10. A city police department receives a public records request for photographs of a crime scene from a closed robbery case. There is no statutory exemption that applies to the photographs. Which of the following statement is correct?**
- **A. The department is not required to release the photographs because the public records law does not apply to photographs.**
- **B. The Department must release the photographs.**
- **C. Unless release of the photographs would violate accepted police standards and procedures, the department must release the photographs.**
- **D. Unless the person taking the pictures has asked the department not to release them, the department must release the photographs.**

Review Questions

- **11. A state employee, Rip V. Winkel, is given a written reprimand for sleeping on the job. The employee files a grievance, and after a public hearing, the grievance committee rules that the employee should have been given a written warning instead of a reprimand. The committee enters an order declaring that the reprimand is invalid. A few weeks later, the agency receives a public records request for all records relating to Mr. Winkel's employment. Which of the following statements is correct?**

Review Questions

- **A. Because the reprimand was overturned, the agency should destroy it.**
- **B. The reprimand is a public record and must be provided in response to the public records request although the agency may attach a statement noting that the reprimand was overturned by a grievance committee.**
- **C. Because the reprimand was overturned, the reprimand should be placed in a sealed envelope and the agency should not produce it in response to the public records request.**
- **D. The reprimand is a public record because the grievance committee should not have held a public hearing on the grievance.**

Review Questions

- **12. A city clerk has received over 150 public records requests over the past year from John Jones. Each of the public records requests asks for records relating to Jones' ex-wife who is a city employee. Jones is very rude and obnoxious when he comes to city hall to make his requests. Which of the following options is available to the clerk?**
- **A. Because Jones is so rude, the clerk would be authorized to ban him from city hall and instead require him to make his requests in writing or over the telephone.**
- **B. Because Jones has asked for an extraordinary number of records, the city clerk would be authorized to ask him to specify the particular records that he wants.**
- **C. Because Jones has made numerous public records requests which all relate to his ex-wife, he can be charged with stalking.**
- **D. None of the above.**

Review Questions

- **13. A state employee is working on an investigative report. The investigation has been going on for several weeks and the employee has prepared a number of drafts of the report. A public records request is filed asking for “all records relating to the investigation.” Which of the following constitutes a public record and must be released unless there is a statutory exemption?**
 - **A. An early draft that never left the employee’s desk and was never circulated to anyone within or outside the agency.**
 - **B. A draft report that was sent to the employee’s supervisor and was returned with a note “need to make changes”**
 - **C. A draft report that was emailed to the supervisor but the supervisor has not read it yet.**
 - **D. B and C.**

Additional Resources

Office of Attorney General Pam Bondi

website: <http://www.myfloridalegal.com>

Governor Rick Scott website:

<http://www.flgov.com>

First Amendment Foundation website:

<http://www.floridafaf.org>