

Section fifteen - PUBLIC RECORDS/SUNSHINE LAW (Open Government)

Overview –

The State of Florida has established by law some of the most comprehensive open government laws in the country, laws that can impact virtually every aspect of local government operations. The open government laws include the Public Records Law (Chapter 119, Florida Statutes) and the “Sunshine Law” (Section 286.011, Florida Statutes). These laws are generally intended to provide public access to government records and meetings.

The Florida Department of Legal Affairs, headed by the Attorney General, is responsible for administration of the open government laws and publishes the *Government-in-the-Sunshine Manual* to assist local governments and others in implementing these laws. An electronic edition of the Manual is available on the Attorney General’s website, <http://www.myflsunshine.com/sun.nsf/sunmanual>. The Attorneys General’s Office provides training videos on the website to assist local governments in resolving issues related to public records (including exemptions and redactions thereto), fees and costs that may be charged for providing public records, and public meeting requirements <http://www.myflsunshine.com/sun.nsf/pages/Municipal>. The website also includes a searchable database of Attorney Generals’ opinions <http://myfloridalegal.com/ago.nsf/Opinions>.

Public Records Law -

Chapter 119, Florida Statutes, provides that as a matter of state policy, “... all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.” Public records are defined to include “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, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The Division of Library and Information Services within the Florida Department of State is responsible for adopting rules to establish retention schedules and a disposal process for public records. With regard to the provision of access to such records, Chapter 119, Florida Statutes, includes requirements related to:

- Maintenance, preservation, and retention of public records
- Fees for inspection and copying of public records
- Exemptions from inspection or copying of public records

These requirements have given rise to numerous questions regarding their application to specific circumstances, many of which have been resolved either through an opinion rendered by the Attorney General or by a court of law. Such resolutions have been summarized by the Attorney General in the *Government-in-the-Sunshine Manual*. Topics covered in the *Manual* include:

What kinds of records are subject to the Public records Law?

To what extent can an agency regulate inspection and copying of public records?

What are the statutory exemptions?

What fees may be imposed for inspection and copying of public records?

What are the requirements for maintenance and disposal of public records?

Sunshine Law -

At the local government level, the Sunshine Law is intended to provide open access to government meetings. The basic requirements of the Sunshine Law are as follows:

- meetings of public boards or commissions must be open to the public

- reasonable notice of such meetings must be afforded the public
- minutes of the meeting must be taken

As with the Public Records Law, the resolution of numerous questions regarding the application of Sunshine Law requirements to specific circumstances have been summarized by the Attorney General in the *Government-in the Sunshine Manual*. Topics covered in the *Manual* include:

Which agencies are subject to the Sunshine Law?

What meetings are subject to the Sunshine Law?

What types of discussions are subject to the Sunshine Law?

To what other activities does the Sunshine Law apply?

What are the meeting notice and procedural requirements?

What are the exceptions?

What are the consequences for failure to comply with the requirements?

Government officials should also be aware that there may be other requirements in State law, local ordinance, or policy that are supplemental to the Sunshine Law, particularly with regard to notice and minutes requirements.

Issue Resolution -

In the event that a local government is faced with a Public Records Law or Sunshine Law issue, the appropriate government officials should:

- review the requirements of the Public Records or Sunshine Law and any other applicable statutory provisions
- review any applicable local ordinances or policies
- consult the Attorney General's Manual
- seek the advice of legal counsel,
- If still unresolved, request an opinion from the Attorney General.

References –

Chapter 119, Florida Statutes; Public Records:

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=Ch0119/ch0119.htm

Section 125.001, Florida Statutes; Board meetings; notice

Section 125.17, Florida Statutes, Clerk responsibility for minutes

Section 125.66, Florida Statutes, County ordinances, enactment procedure

Section 166.041, Florida Statutes; Procedures for adoption of municipal ordinances and resolutions

Section 286.011, Florida Statutes; Public meetings and records; public inspection; criminal; and civil penalties

Government-in-the-Sunshine Manual – Florida Department of Legal Affairs

<http://www.myflsunshine.com/sun.nsf/sunmanual>

Information relating to archives and records management:

<http://dlis.dos.state.fl.us/recordsmgmt/statutes.cfm>