

TRANSPARENCY IN GOVERNMENT AND PAFR WEBINAR

Robert Meyers, Esq.
email: rmeyers@wsh-law.com

Miriam Soler Ramos, Esq.
miriam.solerramos@hklaw.com

July 17, 2025

AGENDA

- Introduction
- General laws promoting transparency
- Disclosure statutes/rules
- Transparency and procurement
- PAFR
- Auditor selection
- GFOA best practices: P-Cards
- Concluding remarks

ORIGINS OF TERM

- Possibly, attributed to Supreme Court Justice Lewis Brandeis who wrote an article for Harper's Weekly in 1913 entitled "What Publicity Can Do."
- Famous quote from the article: "Sunlight is the best disinfectant." He was surmising that shining a light on actions can help to expose and prevent wrongdoing.
- AI definition of transparency in the context of government – government's obligation to be open, accountable and honest with actions about its operations and decision-making processes.
-

SUNSHINE LAW/PUBLIC MEETINGS LAW

- Purpose is to require government decisions by its elected officials, boards and committees to be held in public.
- To comply with the Sunshine Law, government must take the following steps: 1) notice the meeting; 2) hold the meeting in a public place (generally City Hall); 3) take minutes of the meeting and 4) allow for public participation.
- The law applies to items that are on the agenda of that board and extends to any item that foreseeably could come before the board.

SUNSHINE LAW

Not only are regular and special meetings of the entire local government board required to adhere to the Sunshine Law, any and all communications consisting of a dialogue between two or more members of the same board about their board's business would violate the Sunshine Law if such communications occur outside of a public meeting.

SUNSHINE LAW

- Communications covered by the Sunshine Law include the following: conversations, telephone calls, emails, texts, social media posts.
- Communications board members have with each other not pertaining to their government's business are permitted.
- Moreover, an individual board member may communicate with staff without violating the Sunshine Law because staff is not covered by the statute.

SUNSHINE LAW

Notice: The type of notice and the location may vary but it generally means that the government must provide advance notice to the public of any government meeting of the commission/council/advisory boards/committee, identifying the time and place of the meeting with an agenda.

Insufficiency notice examples: Noticing an out-of-town meeting of a local government is inconsistent with the purpose of the Sunshine Law because such a meeting would be inconvenient for the public to attend.

Noticing a meeting on the City's Facebook page may be insufficient as well as this type of notice will not reach individuals who do not use social media

SUNSHINE LAW

Open Meeting: Sunshine meetings should be held in City Hall – in chambers if it is a meeting of the governing board.

Meetings held elsewhere are considered suspect – cannot hold a meeting in restaurant, private club, hotel, homeowner's association board room, unless arrangements are made to ensure the meeting is open to the public.

If a government board meets in a smaller room but a large turnout is expected, may have to move the location of the meeting to accommodate the overflow crowd in the name of access.

SUNSHINE LAW

- Minutes: Minutes must be taken of all boards required to follow the Sunshine Law. The fact that a public meeting may be recorded does not negate the requirement to take minutes. The minutes do not have to reflect everything said at the meeting but should include a general summary of the action items under consideration and how each board member voted. Discussion items where no action is taken should be part of the minutes as well

SUNSHINE LAW

- Participation: The public has the right to participate at public meetings before government votes on action items. Moreover, most local governments provide a general public comment period to speak on other germane issues not addressed by the action items.
- Government can limit public comments to a few minutes per speaker and cut off speakers without abridging their First Amendment rights.
- **Polling question: How many members of a public board must communicate with each other to compel compliance with the Sunshine Law:**
 - 1) 3
 - 2) a quorum of the board
 - 3) a supermajority of the board
 - 4) 2

PUBLIC RECORDS LAW

Reason for public records law is to give the public **access** to all records government officers and employees send or receive in connection with government business.

Statute gives the public the right to obtain copies of the records and/or inspect records.

There is a retention period as well. Depends on the type of record. State of Florida has a records retention schedule that must be followed.

A portion of a record containing confidential information or information unrelated to government business may be redacted but the remainder of the record has to be released.

As general rule, government cannot object to producing a record due to a claim of invasion of privacy.

PUBLIC RECORDS

The term “record” is defined broadly and the overriding principle is to release records maintained by public agencies unless a record is specifically exempt or contains confidential information.

A records request can include documents related to contract awards, land use decisions, employee personnel files, settlement agreements – to name a few examples

The person requesting public records does not have to assert a specific right or connection to the government to make a public records request.

Persons requesting records are not required to identify themselves or put their requests in writing.

PUBLIC RECORDS

- Marking a record as “confidential” or “draft” does not necessarily mean it can be withheld.
- Destroying a public record or failure to produce a public record within a reasonable timeframe can result in criminal and/or civil sanctions against an individual or the government.
- **Polling question: A public records request must be made in writing. True or False**

DISCLOSURE LAWS

- Transparency in government in part is accomplished by requiring public officials to disclose or report information which could reveal a potential conflict between their public duties and the public interest. These disclosures are published and are available for the public to view. In some cases, these forms are filed with the city clerk – others are filed with the Florida Commission on Ethics.
- The failure to file such reports could subject the offender to penalties imposed by the Florida Commission on Ethics or local ethics commissions.

VOTING CONFLICTS

- The rationale for enacting voting conflict laws is to operate as a safeguard against elected officials voting on matters that may inure to their special financial benefit or prevent them from sustaining a financial loss.
- The voting conflict laws prohibit the official from voting when the action taken will yield a special benefit or loss to the official; the official's family member, a business associate or an employer.
- If an official has a voting conflict, the official must announce the nature of the conflict at a public meeting, abstain from voting and file a Memorandum of Voting Conflict with the clerk. In some jurisdictions, the official is required to leave the room after declaring the conflict.
- An official who has a voting conflict and disregards it is violating state ethics laws.
- The process described above when an official has a voting conflict promotes transparency in a few ways: the declaration of the conflict is made at a public meeting; the official with a conflict is barred from voting, and a report must be filed with the clerk detailing the voting conflict, which is a public record.

FINANCIAL DISCLOSURE

- Financial disclosure serves the purpose of providing the public access to potential conflicts between officials' personal financial interests and their government duties. It is also a tool watchdog agencies utilize as part of their investigative function.
- All elected officials and employees with significant responsibilities must complete Form 1 -- an annual requirement.
- Forms are maintained by the Florida Commission on Ethics. Any person has the right to access these forms by logging onto the Commission's website.
- Form 1 includes the following sections: primary sources of income; secondary sources of income (major clients); real property, intangible personal property (investments) and liabilities. Disclosures are not necessary under certain thresholds and dollar amounts are not listed on the form.

GIFT REPORTING

- Most obvious reasons for mandating gift reporting are to identify the source of gift and to ascertain the value of a gift. Of particular interest are gifts from individual and firms with a business relationship with the official's government. The focus of gift reporting is on "official capacity" gifts, not gifts from one's government, family or friends.
- A public official is barred from accepting gifts if the gifts are intended to influence the official. An explicit promise by a public official to take action to benefit the donor is a crime.
- Gifts of any value can be accepted as long as they are reported if they exceed \$100.
- Gifts from vendors, contractors and lobbyists cannot be greater than \$100.
- Campaign contributions are not treated as gifts and do not have to be reported – other than the reporting the donations in the candidate's treasurer's report.

OUTSIDE EMPLOYMENT

State law and local ethics laws prohibit government employees from accepting outside employment which could impair their independence of judgment and conflict with their government position. In addition to potential conflicts, government reviews outside employee requests from all employees and may reject such requests for performance-based reasons.

In addition to potential conflicts with one's government job, outside employee activities are monitored to ensure employees are not using government resources in furtherance of their outside employment.

If an elected official has employment which conflicts with his/her responsibilities as an elected official, the only remedy is to resign from office or cease the outside employment activities – it is not cured by declaring a voting conflict if such a situation were to arise.

For employees, they must complete a form requesting outside employment – reviewed by a department head or the city manager. The disclosures on the form include: type of work; location of work site; estimated hours of outside employment; availability to be released from outside employment city in case of emergency.

Many governments also require the employee to report the income earned from such outside employment activities.

Polling question: All local government officials and employees who receive gifts connected to their positions are required to report these gifts, if the gifts exceed \$100. True or False

EX PARTE COMMUNICATIONS

When government officials are acting in their quasi-judicial capacity (making decisions that impact an individual's rights – e.g., reviewing a development application), the process is akin to a judge presiding over a hearing.

The review of the application is supposed to be based on the evidence offered up by the parties at the hearing. Many local governments allow communications off the record (ex parte communications) between an elected official and a party attempting to influence the official's vote. Some governments follow the Jennings Rule which expressly bars ex parte communications.

For governments that permit ex parte communications, there are two rules that must be followed: 1) the official discloses the communications at the hearing prior to the vote and 2) the official cannot state his/her support or opposition to the project before the actual public hearing.

If an official prejudices the matter, is biased, or doesn't report ex parte communications, it could be grounds for a court to set aside the action taken by the governing body.

LOBBYING AND LOBBYISTS

- Individuals who attempt to influence local government decision-makers on behalf of third parties generally meet the definition of lobbyists and are required to file forms in order to lobby. These disclosures may be required even if the lobbyist receives no compensation for his/her services.
- Disclosures by lobbyists consist of the filing of three forms:
 - 1) Registration form: stating the name of the lobbyist and the principal retaining the lobbyist; the purpose of the representation (listing the specific items); an affidavit indicating the lobbyist will not be compensated by a contingency fee, and in some jurisdictions, the fees paid to the lobbyist for such representation
 - 2) Authorization to lobby form: a form submitted by the principal authorizing the individual to lobby on the principal's behalf
 - 3) Expenditure report: detailing expenditures the lobbyist incurred as a result of representing the principal.

PLANNING AND ZONING DISCLOSURE OF INTEREST

- Many local government require these forms for land use related applications to ensure transparency regarding the individuals or entities who stand to benefit from the application. The form, an affidavit, is typically submitted with the land use application.
- The information disclosure on the form generally consists of the following:
 - 1) Ownerships interests – usually exceeding 5% in the property or business entity involved
 - 2) Entities involved – partnerships, corporations, trusts and other representative capacities, with specific requirements for identifying individuals with ultimate ownership in those entities including details such name, address and percentage of ownership.

CAMPAIGN FINANCING LAWS

Detailed reporting requirements for candidates running for office are available on a government's website.

Treasurers' Reports must be filed at regular intervals and list contributions received and expenditures made by the candidate.

The contribution section includes listing the person/entity contributing, date of contribution, amount of the contribution, type of contribution and the occupation of contributor.

The expenditure section includes date, amount and type of expenditure. Expenditures only permitted for campaign-related activities.

Final report documents how the remaining funds are expended and must be disbursed in accordance with state law.

Polling question: A person who otherwise meets the definition of a lobbyist but receives no compensation for his/her lobbying activities does not have to register as a lobbyist. True or False

PUBLIC PROCUREMENT

- The premise is that competition for awarding government contracts represents best practice particularly when the value of the contract exceeds certain thresholds.
- Exceptions to competition should be used sparingly. The award of government contracts or the decision to grant an exception is generally done by the governing board of the local government.
- In addition to encouraging competition as a foundational principle in government contracting, openness is valued. Meetings of the selection committees reviewing and ranking proposals are usually held as duly-noticed public meetings.
- Most governments require individuals who are appointed to serve on selection committee to disclose business relationships (past or present) with proposers as a condition of serving on the committee.

CONE OF SILENCE

- Cone of Silence ordinances exist once a solicitation is released to limit verbal communications between proposers and government decision-makers in private settings/meetings. Communications are allowed under two circumstances: 1) between proposers and decisionmakers provided the meetings are duly-noticed public meetings; and 2) written communications from proposers to decisionmakers as long as the communications are forwarded to the clerk and included in the file.
- Some cones are lifted after the City Manager has forwarded a recommendation to the elected officials, others remain in effect until the time of award.
- A limited number of governments ban campaign contributions from current vendors or proposers to curb potential abuses by generous donors to the campaign accounts of one or more members of the governing board.

PAFR

- Popular Annual Financial Report (PAFR) is a summarized version of the government's official financial statement – sort of an executive summary.
- Not meant to replace the CAFR and isn't in compliance with GAAP and other standards. CAFR viewed as too complicated and detailed for most individuals to digest.
- PAFR can accomplish the following: 1) increases transparency because more people are likely to read it and understand it; 2) provides important information to the community – another form of community outreach; 3) serves as a reference guidance and often has a visual appeal to it, unlike more formal financial statements
- Generally meant to convey information about major aspects of the government's financial condition that may be of interest to the community.
- Categories may include: a letter from a local official, general information about the government, achievements: operational and economic developments; major funds; abbreviated financial statements, revenue trends, -- taxes, capita; assets; debt

AUDITOR SELECTION

SECTION 218.391, FLORIDA STATUTES

Primary purpose of the auditor selection committee is to assist the governing body in selecting an auditor to conduct the annual financial report required by state law but may serve other audit oversight purposes as determined by the entities governing body.

Law requires a request for proposal for the solicitation of the necessary audit services, a selection and negotiation process

Law specifies the composition of the selection committee, the responsibilities of the committee and audit proposal evaluation factors.

Committee must contain at least three members, one of which must be a member of the governing board who serves as chair. Employees are not eligible to serve on the committee.

The committee shall establish factors for the evaluation of audit services to be provided by evaluating the ability of the personnel, experiences, ability to furnish required services and such other factors as determined by the committee.

AUDIT SELECTION

Compensation may be one of the factors considered by the committee but it shall not be the sole or determining factor used to evaluate proposals.

The committee ranks and recommends in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services.

The governing body negotiates a contract and select one of the firms recommended by the committee and will use one of two methods, depending on whether price was a criterion.

Every procurement of audit services shall be evidenced by a written contract, embodying all the terms and conditions. An engagement letter signed and executed by the parties constitutes a written contract.

The following terms must be included: services to be provided for fees or other compensation submitted in sufficient detail to demonstrate compliance with contract; provision specifying the contract period, including renewals and the conditions under which the contract may be terminated or renewed. Written contracts entered into pursuant to the above may be renewed and may be done without the use of the auditor selection procedures provided in this section. Renewal of the contracts shall be in writing.

Some governments limit the length of the contract term and/or the number of renewals.

GFOA BEST PRACTICES

- Purchasing Cards –
- Benefits include convenience, efficient payment method, lower transaction costs, rebate revenue, improved purchasing data analytics, immediate payments to vendors, emergency preparedness
- Challenges include approval process, duplicate payments; shifting of reconciliation responsibilities, compliance, complex spending analysis, delays in recording activity, front page risk
- OIG audits – low hanging fruit

28

No polling question, but share questions from participants regarding the materials presented in slides 23-28.