

THE SUNSHINE LAW AND THE PUBLIC RECORDS LAW

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THE SUNSHINE LAW (AN OVERVIEW)

Article I, Section 24 (Florida Constitution)
Section 286.011, Florida Statutes



The Florida Constitution

Article I, Section 24

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a **county, municipality, school district, or special district**, at which **official acts** are to be taken or at which **public business** of such body is to be transacted or discussed, **shall be open and noticed** to the public and meetings of the legislature shall be open and noticed...



Government-in-the-Sunshine

Chapter 286.011(1), Florida Statutes

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times.

Requirement of Ch. 286.011(1), F.S.

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

Purpose

The purpose of the Sunshine Law is to ensure that decisions by public bodies are made in an open forum accessible to members of the public. Myers v. News-Press Publishing Company, Inc., 514 So.2d 408 (Fla. 2nd DCA 1987).

“Decisions” are official action which may include, but are not limited to:

- * Recommendations
- * Discussions
- * Deliberations



Who is Subject to the Sunshine Law?

- ▣ Any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision. (i.e. collegial bodies)
- ▣ Applies equally to elected or appointed boards or commissions.
- ▣ **Advisory Boards.** See Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974); Wood v. Marston, 442 So.2d 934 (Fla. 1983); and Lyon v. Lake County, 765 So.2d 785 (Fla. 5th DCA 2000).

Who Is Not Subject to the Sunshine Law?

- ▣ The Judiciary and the Legislature. See Locke v. Hawkes, 595 So.2d 32 (Fla. 1992) and AGO 83-97 (1983).
- ▣ Fact-finding Committees (strictly for the purpose of information gathering and reporting). See Cape Publications, Inc. v. City of Palm Bay, 473 So.2d 222 (Fla. 5th DCA 1985).
- ▣ Private Organizations

What is a “Meeting” Subject to the Sunshine Law

- ▣ Any gathering, formal or informal, of two or more members of the same collegial body to discuss some matter on which it is foreseeable that action will be taken by the body at some future point. See Hough v. Stenbridge, 278 So.2d 288 (Fla. 3rd DCA 1973).
- ▣ Discussions and deliberations, as well as formal action taken by a collegial body. (Interactive communication)
- ▣ No requirement that a quorum be present

Written Correspondence and Email

- ▣ One-way communication is okay (i.e. A member of a collegial body may send written or electronic correspondence to his/her fellow board members pertaining to an item that they may consider at a future date, however the other members may not offer a response). See AGO 07-35 (2007)
- ▣ Interaction among board members = violation
- ▣ DO NOT USE “REPLY ALL”



Use of Nonmembers as Liaisons between Board Members

- ▣ Third parties who are not members of a collegial body may not be used to exchange information between members of the body if such an exchange would otherwise be subject to the Sunshine Law.

Exceptions to the Sunshine Law

- Attorney-Client Discussions (Shade Session) – Section 286.011(8), F.S.
 - Strict procedural guidelines
 - Discussion must be limited to settlement negotiations or strategy discussions related to pending litigation expenses
 - Transcript of Shade Session must be taken by a court reporter and the transcript becomes a public record upon the final conclusion of the pending litigation
 - **NO FINAL DECISIONS ON LITIGATION MATTERS MAY BE MADE AT A SHADE SESSION**

Other Exceptions

- ▣ Executive Sessions related to Labor Negotiations (Collective Bargaining) – Section 447.605, F.S.
- ▣ Procurement Selection/Evaluation Committees (negotiations & presentations) – Section 286.0113, F.S.



Candidates and Members-Elect

- ▣ Members-elect of boards or commissions are subject to the Sunshine Law. See Hough v. Stembridge, 278 So.2d 288, 289 (Fla. 3rd DCA 1973).
- ▣ The Sunshine Law does not apply to candidates unless the candidate is an incumbent seeking reelection. See AGO 92-05 (1992).



Violations of the Sunshine Law

- ❑ Any member of a collegial body who violates the Sunshine Law is guilty of a noncriminal infraction, punishable by fine not exceeding \$500. Section 286.011(3)(a), F.S
- ❑ Any member of a collegial body who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Section 286.011(3)(b), F.S.
- ❑ Criminal penalties apply to members of advisory boards as well as members of elected or appointed boards. AGO 01-85 (2001)

ADDITIONAL NON-CRIMINAL PENALTIES

▣ Suspension or Removal from Office. The governor may:

1) Suspend any public official who has been charged with a misdemeanor arising out of his or her official duties; and

2) Remove any public official who is convicted of a misdemeanor arising out of his or her official duties.

The W.D. Childers Incident (2003)

- ❑ Escambia County Commission Chairman; Former State Senate President
- ❑ Wanton and Knowing violation of the Sunshine Law
- ❑ 60-day jail sentence (served 38 days) – First public official incarcerated for violation of the Sunshine Law
- ❑ \$500 fine plus \$3,600 court costs



THE FLORIDA PUBLIC RECORDS LAW

Chapter 119, F.S.



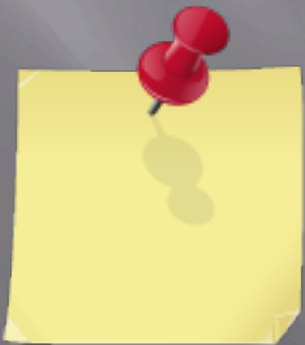
Public Records

Section 119.011(11), F.S.

- ▣ "Public records" means 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.

Notes or Non-Final Drafts

- No “unfinished business” exception to the public inspection and copying requirements of Chapter 119, F.S. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate or formalize knowledge, then it is a public record regardless of whether it is in final form. Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc. 379 So.2d 633, 640 (Fla. 1980).



What Agencies are Subject to the Public Records Law?

- ▣ “Any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Services Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency.” Section 119.011(2), F.S.

Computer Records and Email

- ❑ Information stored in a public agency's computer "is as much a public record as a written page in a book or tabulation in a file stored in a filing cabinet." Seigle v. Barry, 422 So.2d 63, 65 (Fla. 4th D.C.A. 1982).
- ❑ Email messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption from public inspection. AGO. 96-34 (1996).
- ❑ **EXCEPTION** - Private emails stored in government computers do not automatically become a public record simply by virtue of that storage. State v. City of Clearwater, 863 So.2d 149 (Fla. 2003).

Transitory Messages

- ▣ Transitory messages are messages of short-term value based upon the content or purpose of the message, *not* the format used to transmit it (i.e. reminders, event notices, etc...).
- ▣ Transitory messages are not intended to formalize or perpetuate knowledge, do not set policy, establish guidelines, confirm a transaction or act as a receipt.
- ▣ Retain until obsolete, superseded or administrative value is lost.

Who Responds to Public Records Requests?

- ▣ “Custodian of public records” mean “the elected or appointed state, county or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.” (i.e. Clerk) Section 119.011(5), F.S.



Who is Authorized to Inspect Public Records?

- ▣ ANYONE! Section 119.01, F.S.
- ▣ No “legitimate need” or “special purpose” requirement. See State ex rel. Davis v. McMillan, 38 So.2d 666 (Fla. 1905).



When Must an Agency Respond to a Public Records Request?

- ▣ Custodian of records must promptly acknowledge request and respond in good faith.
- ▣ No statutory time to respond, but custodian must make reasonable efforts to do so.

Exemptions

- ▣ See Section 119.071, F.S.
- ▣ The Public Records Law is liberally construed in favor of open government
- ▣ Exemptions = Narrowly construed
- ▣ Burden is on the agency to illustrate why a record falls within the statutory exemption



THE END

