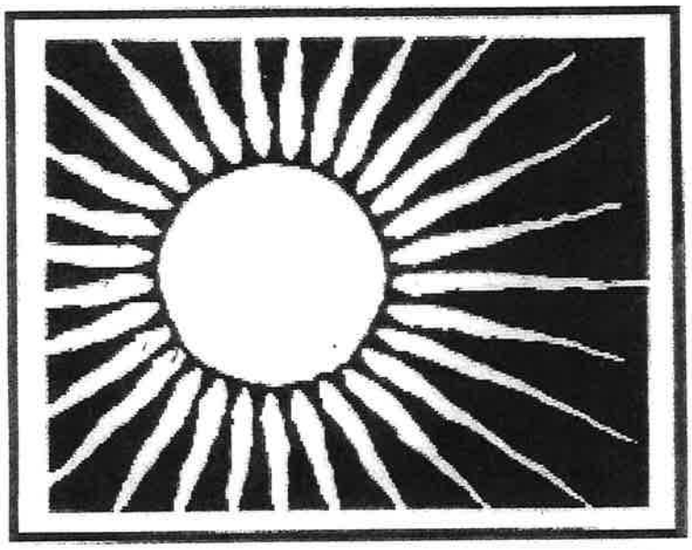
QUICK REFERENCE GUIDE

FLORIDA'S OPEN GOVERNMENT LAWS



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Tallahassee, FL 32301
800/337-3518
www.floridafaf.org

WHERE TO GO FOR HELP

First Amendment Foundation
(800) 337-3518
www.floridafaf.org

Open Government Mediation Program
(850) 245-0157
www.myfloridalegal.com

Brechner Center for Freedom of
Information/University of Florida
(352) 392-2273
www.brechner.org

Online Version of the Sunshine Manual
http://myfloridalegal.com/sun.nsf/manual

Florida Department of State,
State Library & Archives of Florida
(850) 245-6750
http://dlis.dos.state.fl.us

Florida Press Association
(850) 222-5790
www.flpress.com

Reporter's Committee for Freedom of the Press
(800) 336-4243
www.rcfp.org

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PUBLIC RECORDS LAW

THE RIGHT OF ACCESS – Article I, Section 24, Florida Constitution: "Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf . . . . This section specifically includes the legislative, executive, and judicial branches of government; . . . counties, municipalities, and districts; and each constitutional officer, board, and commission . . ."

Chapter 119.01(1), Florida Statutes: "It is the policy of this state that 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."

The right of access guaranteed by Article I, section 24 of the Florida Constitution applies to the legislative, executive, and judicial branches of government, including any entity created pursuant to a law or by the Constitution, such as a nonprofit organization created to carry out a public function. However, the Public Records Act does not apply to the Legislature or Judiciary.

Legislative Records: Section 11.0431, Florida Statutes
Court Records: Rule 2.051, Fla. Rules of Judicial Administration

WHAT IS A "PUBLIC RECORD"? – Chapter 119, Florida Statutes, defines "public records" as "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."

The definition for public records is quite broad and includes *all materials* made or received by an agency in connection with official business used to perpetuate, communicate, or formalize knowledge. This means public records are not limited to traditional written documents, but that tapes, photographs, films, and sound recordings, for example, are also considered public records. There is both a statutory and a *constitutional* right of access to government records.

These are just a few examples of records: personnel records, correspondence sent to or by city officials, reimbursement records, salary records, tape recordings of staff meetings, travel itineraries and airline reservations, and videotaped training films.

WHAT IS AN "AGENCY"? – All government agencies, state or local, are responsible for providing access to public records. An "agency" is defined as "any state, county, district, authority or municipal officer, department, division, board, bureau, commission . . . and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." ***NOTE: A private entity "acting on behalf of" a public agency is subject to the state's public records law, as are private entities created pursuant to law or by a public agency, such as certain nonprofit organizations, or public/private partnerships. Consider whether the private entity is merely providing services to a public agency versus rendering services in place of the agency, or in other words, the private entity is performing a government function.***

REQUESTING A PUBLIC RECORD – Without specific statutory authority, an agency cannot require that a request for public records be made in writing or in person, but you may wish to make your request in writing to ensure there is an accurate record of what was requested. Unless the requested information is confidential and exempt, a custodian of public records must honor a request for records, whether it is made in person, over the telephone, or in writing. In general, a requestor cannot be required to disclose the reason for the request. As a general rule, then:

You don't have to show identification.
You don't have to make your request in writing.
You don't have to give reason for your request.

EXEMPTIONS – There is a general presumption of openness, meaning that a record is *presumed* subject to public disclosure unless there is a specific statutory exemption. Only the Legislature can create an exemption to our constitutional right of access. Currently, there are over 1,000 exemptions to the public records and open meetings law. A few examples of records that are generally exempt from public disclosure include: personal financial information, social security numbers, trade secrets, records of an active investigation, and patient identifying information. (See the First Amendment Foundation website for a searchable database of the 1,000+ exemptions at www.floridafaf.org.)

DENIAL OF A REQUEST – A custodian of a public record who contends that the requested record or part of the record is exempt from inspection *must state the basis for that exemption, including the statutory citation*, and when asked, the custodian must put the denial of a public record request in writing. If a record contains both exempt and non-exempt information, the records custodian can only redact that portion of the record which is exempt and must provide access to the remainder. ***TIP: If your request for records is denied, ask that the denial be made in writing, including the exact statutory citation for the exemption authorizing the denial and a specific statement citing the reason(s) for concluding that the record is exempt or confidential. Section 119.07(1) (c) and (d). F.S.***

FORMAT – An agency must provide a copy of a public record in the format requested *if* the record is maintained in that form. If the record is not in the format requested, an agency has the *option* of converting the record and charging a fee as detailed below. Likewise, an agency is required to provide access to records that exist at the time the request for access is made and is NOT required to create a record pursuant to a specific request.

RETENTION – The Division of Library and Information Services at the Department of State determines how long public records must be maintained. Florida law requires agencies to give the Division a list or schedule of records that are no longer needed to transact public business and that do not have sufficient administrative, legal, fiscal, or historical significance to justify keeping them. The Division has rules, binding all agencies, concerning the disposal of public records. Contact the Division for a copy of record retention schedules at (850) 245-6750.

FEES – Generally, there is no charge for *inspection* of a public record. The custodial agency can charge a fee for copies of a public record — up to 15 cents per one-sided copy for paper copies that are 8 1/2 x 14 inches or less. For all other copies, the custodial agency can charge the *actual cost of duplication.*

If the nature and volume of the records to be copied requires extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a reasonable service charge based on the *actual costs incurred.* Extensive use is not defined in the statutes, so each agency must determine what is an extensive use of its resources. ***TIP: If an agency cites an extensive use fee, ask the agency to detail the costs in writing.***

ENFORCEMENT – If your request for access is denied, first call the First Amendment Foundation. Options for enforcement include: mediation through the Open Government Mediation Program, file a complaint with your local state's attorney, or file suit in civil court.

PENALTIES – A *knowing* or intentional violation is a 1st degree misdemeanor punishable by a fine of up to $1,000 and a jail term not to exceed one year. An unintentional violation is a non-criminal infraction, punishable by a fine up to $500. A public officer who intentionally violates the public records law is subject to suspension or removal from office. Attorney's fees and court costs are available to the requestor that prevails in a civil suit for access.

Contact FAF for more information: (800) 337-3518

SUNSHINE LAW

RIGHT OF ACCESS – Article I, Section 24 of the Florida Constitution: "All meetings of any collegial body of the executive branch of state government or of any . . . county, municipality, school district, or special district, at which official acts are to be taken or at which public business . . . is to be transacted or discussed, shall be open and noticed to the public . . ."

Chapter 286, 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, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings."

Florida's Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. The Sunshine Law generally applies to *any* gathering, whether formal or casual, of two (2) or more members of the same board or commission meeting to discuss some matter on which foreseeable action will be taken.

APPLICATION OF THE SUNSHINE LAW – The Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision." It applies equally to elected or appointed boards or commissions such as school boards and special districts and virtually all state and local collegial public bodies are covered by the open meetings requirements.

The Sunshine Law generally does not apply to private entities. However, there are some instances where a private entity may be subject to the open meetings law. A private entity created pursuant to law or by a public agency, such as certain nonprofit organizations, is subject to open meetings requirements. Also, when a private entity is "acting on behalf of" a public agency, the Sunshine Law may apply. Consider whether the private entity is merely providing services to a public agency versus rendering services in *place of* the agency.

The judiciary and the state legislature are not subject to the Sunshine Law, but each has its own constitutional provision relating to access. The Florida Legislature is bound by the requirements of Article III, s. 4(e), Fla. Con., which says that meetings between more than two (2) members of the Legislature must be reasonably open to the public.

Similarly, Florida courts are not bound by the meetings requirements in Article I, section 24(b), Fla. Con. However, the 1st Amendment of the United States Constitution gives a criminal defendant a right to a public trial, and thus, the public's right to access the criminal court proceedings is a well-settled area of law. On the other hand, there is no case law, Florida or Federal, that has directly addressed the application of the First

MEETINGS NOT SUBJECT TO THE SUNSHINE LAW – Generally, the Sunshine Law does *not* apply to social events, fact-finding meetings, or meetings where there is an applicable statutory exemption.

- Social Events: Members of a public board are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board are not discussed at such gatherings.
- Fact-finding meetings: Meetings for the purposes of merely gathering information where no recommendations are made, public business is not discussed, or votes are not taken are not subject to the Sunshine Law.
- Meetings where a *specific* statutory exemption applies: The law provides a presumption of openness, which means that all meetings between two or more members of the same board or commission are presumed open to the public unless there is a *specific* statutory exemption. There are a limited number of exemptions which would allow for the closure of a meeting. Some examples include certain discussions with the board's attorney over pending litigation and portions of collective bargaining sessions.

In addition, specific portions of meetings of some agencies may be closed when those agencies are making probable cause determinations or considering confidential records. However, an agency cannot close a meeting simply to discuss records that are exempt from public disclosure – there must also be a specific statutory exemption allowing for the closure of the meeting. (See the First Amendment Foundation website for a searchable database of the 1,000+ exemptions at www.floridafaf.org.) ***TIP: If denied access to a meeting, request the statutory citation authorizing closure of the meeting.***

PROCEDURAL REQUIREMENTS – There are four (4) simple requirements:

1. Meetings of boards or commissions must be open to the public.
2. Reasonable notice of such meetings must be given.
3. Minutes of meetings must be taken.
4. Venue must be accessible.

A public agency cannot hold a meeting at any facility which discriminates based on age, race, etc., nor can a public agency unreasonably restrict public access. It must hold meetings in an accessible facility of sufficient size so as to accommodate the anticipated turnout.

REASONABLE NOTICE – "Reasonable" is not defined in the Florida Statutes, but the courts have said notice of public meetings must be "sufficient so as to inform" members of the public who may be interested in attending the meeting. This means that such notice must be reasonable under the circumstances. Also, the required notice must be *reasonable* in terms of content, timing, and placement.

PUBLIC PARTICIPATION – The public has an "inalienable right to be present and to be heard" at public meetings. But a government agency can adopt *reasonable rules* which require orderly behavior and allow for the orderly progression of public meetings. This includes limiting the amount of time an individual can speak when a large number of people attend and wish to speak. The Sunshine Law requires that meetings of public boards or commissions be "open to the public at all times." This means public board members should not pass notes during a meeting in lieu of having an open discussion before the public, and all conversations between members must be audible.

VOTING REQUIREMENTS – Written ballots may be used so long as votes are made openly at a public meeting and the ballots are maintained and access provided under the public records law. The Sunshine Law prohibits the use of preassigned numbers, codes, or secret ballots.

EXEMPTIONS – There is a general presumption of openness, meaning that a meeting of two or more members of the same collegial body is *presumed* open unless there is a specific statutory exemption. Only the Legislature can create an exemption to our constitutional right of access. Currently, there are over 1,000 exemptions to the public records and open meetings law, and many of the meetings exemptions have strict limitations, requiring tape recordings, limiting who may attend the closed meeting, etc. ***TIP: When provided a statutory citation authorizing closure of a public meeting, be sure to read the exact statutory language to determine whether the exemption contains limitations.***

CURE MEETINGS – No resolution, rule, regulation, or formal action shall be considered binding except as taken at an open meeting. Action taken in violation of the Sunshine Law is void *ab initio*, as if it never happened. Action – but *not* violations – can be cured when the offending agency takes "independent final action in the sunshine." This means an agency must re-create the meeting that violated the Sunshine Law – engage in the same discussions, debate, and voting.

ENFORCEMENT – If denied access to a public meeting, first call the First Amendment Foundation. Options for enforcement include: mediation through the Open Government Mediation Program, file a complaint with your local state's attorney, or file suit in civil court.

PENALTIES – An unintentional violation of the Sunshine Law is a non-criminal infraction punishable by a fine of up to $500. A *knowing* or intentional violation is a 2nd degree misdemeanor punishable by a fine of not more than $500 and/or a jail term of not more than 60 days. Any public official who intentionally violates the provisions of the Sunshine Law may be subject to suspension or removal from office. Attorney's fees and court costs are available to the requestor that prevails in a civil suit for access.

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