

# “LET THE SUNSHINE IN”

## Public Meetings Law

### Chapter 286 F.S.

Clifford B. Shepard



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## Florida Constitution Article I, section 24 (b)

(b) 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 as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

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## Florida Statute 286.011

- (1) 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.

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## Florida Statute 286.011

- 2) The **minutes** of a meeting of any such board or commission of any such state agency or authority shall be **promptly recorded**, and such records shall be **open to public inspection**. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

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# Notice

Reasonable

# Location

Restaurant ☹️

Private club ☹️

Identification required ☹️

In city limits ☹️

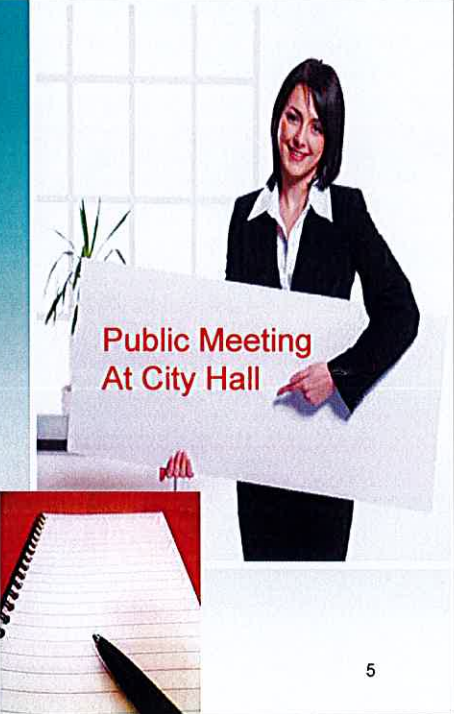
No “CHILLING” effect

# Minutes

Summary v. verbatim

Draft is a public record

Must be approved timely



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## Florida Statute 286.011 = MEETING LOCATION

(6) All **persons** subject to subsection (1) are **prohibited from holding** meetings at any facility or **location** which **discriminates on the basis of sex, age, race, creed, color, origin, or economic status** or which **operates** in such a manner as to **unreasonably restrict public access** to such a facility.

- **Public meetings must be accessible to the physically handicapped Chapter 286.26 FS**

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## Florida Statute 286.011

- **Knowingly attending a meeting in violation of the statute is a misdemeanor of the second degree**
- **Conduct outside the State is a misdemeanor of the second degree**
- **A court may assess an attorney's fee against you for enforcement of this statute unless you have sought and followed the advice of the city's attorney**

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## What is a public meeting?

### Florida Constitution

Meeting of a collegial public body at which official acts taken or business discussed

### Florida Statutes

Meeting at which official acts taken

### Case Law

All meetings where there are discussions of matters which may foreseeably come before a board or commission

"All meetings" include staff, committees, temporary groups or even a single person.

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## Yes, Prosecutions Still Happen

### Grand Jury To Review Century Town Operations; Council Members Charged With Sunshine Law Violations

January 4, 2019



A grand jury will investigate operations of the Town of Century, and three council members have been charged with violating the Sunshine Law.

"A number of issues have been brought to the attention of the State Attorney's Office regarding the manner in which the town has operated, and these are the issues that may be brought before the grand jury," Assistant State

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## What's going on here?



The fact that we don't know IS the point.

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## W.D. Childers goes to jail

### Ex-Senate president goes to jail

W.D. Childers starts a 60-day sentence for Senate law violations — even as his lawyer asks a judge to set him free.



W.D. Childers comments briefly as he enters jail Tuesday in Pensacola. He said he had no reason to be scared. 11

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## Florida Statute 286.011

- The statute is “broadly construed to effect it’s remedial and protective purposes.”
- Applicable to elected and appointed bodies
- Substantial delegation affecting a decision...single individual
- Recommendations limit choices; part of decision process
- Fact finding only IS AN EXCEPTION: **EXCEPT FOR ELECTED BODIES!**

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## Major Exceptions – ALL STATUTORY

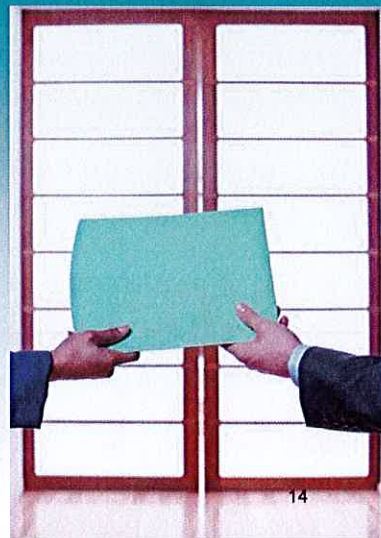
- Pending litigation...settlement negotiations or strategy sessions related to litigations expenditures...limited attendees
- Labor negotiations-bargaining team – exemption as to public meetings and public records Chap 447 F.S.
- Risk management committee
- Security system meeting
- Negotiation with a vendor

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## Exchange of written memorandums

- First bite at the apple
- No response



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## Outside Contact

- You can socialize with other board members
- You can attend the same meeting....**BUT...**



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## You Can Cure a Violation

- No rubber stamp meeting
- Ultimate decision safeguarded
- Multiple cases describing proper procedure

**Cure...**  
**Don't Ignore**



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# Notice

# Location

# Minutes

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## Current Challenges

E-mail... twitter... texting... Facebook... websites

### Times editorials

## Digital age Sunshine

Florida has a proud history of strong open-government laws. But they haven't always kept pace with progress. Consider, for example, the city council members who text or e-mail each other during meetings to skirt open communication. That's not in the public interest.

Now a 178-page report produced by a special governor's commission provides the road map for Gov. Charlie Crist and the Legislature to bring Florida's strong reputation for Sunshine into the 21st century.

Open government is at the core of a representative democracy. Florida's Sunshine laws are the means to ensure

reform, after holding four public hearings across the state, unanimously approved its final report for the governor. Among its recommendations:

- Make all government contracts above a certain dollar amount accessible through the Internet, giving Floridians the tools needed to be public watchdogs.

of these public records.

- Ban government officials from using electronic communications during public meetings.

- Prohibit state agencies from charging a special fee for redacting the contents of a public record that is exempt from public view (such as the Social Security numbers of employees or a law enforcement officer's home address).

The commission was composed of a cross-section of public officials and open government advocates, including the past president of the Florida Society of Newspaper Editors, Jeanne Grinstead, a St. Petersburg Times editor. The group developed

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# Thank You

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# In the Sunshine

**Florida Sunshine Law  
Public Records Ch.119 F.S.**

**Presented by Clifford B. Shepard**



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# In the Sunshine

**Public Records Law**

**Perpetuate**

**Communicate**

**Formalize**



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## Florida Constitution Article I, section 24

- (a) **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**, except with respect to records **exempted** pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

“or persons acting on their behalf”



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## 119.01 General State Policy on Public Records

- (1) 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 DUTY IS ALSO YOURS, IF YOU HAVE CUSTODY**



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## 119.07 General State Policy on Public Records

- (1)(a) Every **person** who has **custody** of a public record shall permit the record to be **inspected and copied** by any person desiring to do so, at any **reasonable time**, under **reasonable conditions**, and **under supervision by the custodian** of the public records.

**DO YOU HAVE CUSTODY?**

**TRANSFER CUSTODY TO CITY CLERK**



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## 119.07 General State Policy on Public Records

- (c) A **custodian** of public records and his or her designee must **acknowledge** requests to inspect or copy records **promptly** and **respond to such requests in good faith**. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

**DUTY: ACKNOWLEDGE PROMPTLY**



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## 119.07 General State Policy on Public Records

- (d) A person who has **custody** of a public record who **asserts that an exemption applies** to a part of such record shall **redact** that portion of the record to which an exemption has been asserted and validly applies, and such person **shall produce the remainder** of such record for inspection and copying.

**DUTY: IF PORTIONS ARE EXEMPT, REDACT AND PRODUCE**  
**ISSUES: IS THE RECORD EXEMPT, CONFIDENTIAL**  
**OR BOTH?**



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## 119.07 General State Policy on Public Records

- (e) If the person who has **custody** of a public record **contends** that all or part of the record is **exempt** from inspection and copying, he or she shall **state the basis** of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.
- (f) **If requested** by the **person seeking** to inspect or copy the record, the **custodian** of public records shall **state in writing** and with particularity the **reasons** for the conclusion that the record is exempt or confidential.

**DUTY: STATE STATUTORY BASIS FOR**  
**EXEMPTION – IN WRITING**



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### 119.07 General State Policy on Public Records

- (4) **The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law.** If a fee is not prescribed by law, the following fees are authorized:

**DUTY: FURNISH COPY**

**ADVICE: COLLECT IN ADVANCE FOR COPY FEES**



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### 119.07 General State Policy on Public Records

- (d) If the **nature or volume** of public records requested to be inspected or copied pursuant to this subsection is such as to require **extensive use of information technology** resources or **extensive clerical or supervisory assistance** by personnel of the agency involved, or both, **the agency may charge**, in addition to the actual cost of duplication, **a special service charge**, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

**DUTY: GATHER DOCUMENTS FOR INSPECTION**

**ADVICE: COLLECT SPECIAL SERVICE FEE IN ADVANCE**



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## Definition of Public Records

### Statutory

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.



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## Definition of Public Records

### Case Law

Any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.

**Perpetuate**

**Communicate**

**Formalize**

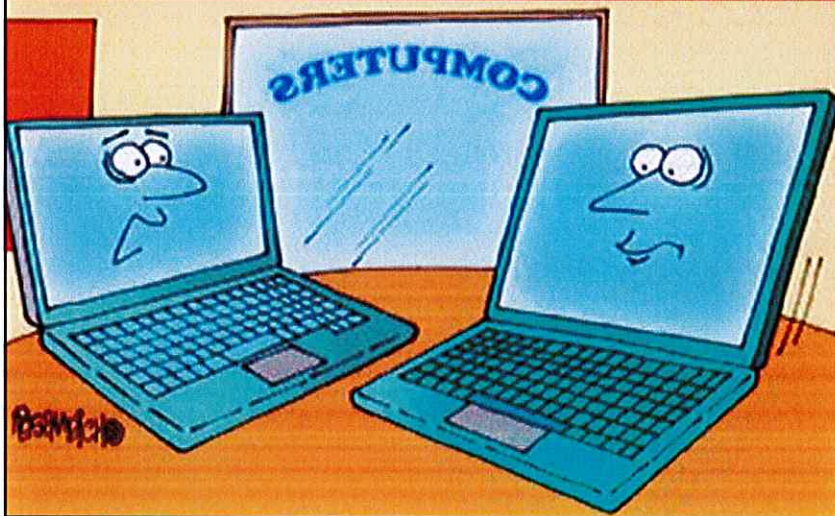


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## Clearwater Case

STATUTORY TEST: TRANSACTION OF OFFICIAL BUSINESS

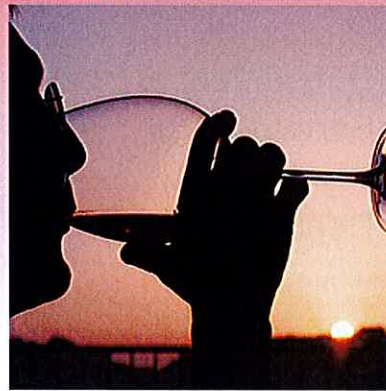


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## Life Lesson

***Merlot and email do  
not mix***



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**Meeting Notes**

**Draft documents**

**Perpetuate**

**Communicate**

**Formalize**



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## **Retention of Records**

The custodian has an obligation to retain public records (this might be you.)

Department of State, Division of Library Services

Deposit with City Clerk



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# Schwab Case

Totality of factors case

“persons acting on their behalf”



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## 119.10 Violation of chapter; penalties.

- (1) Any public officer who:
  - (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.
  - (b) **Knowingly** violates the provisions of s. [119.07](#)(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
- (2) Any person who **willfully and knowingly** violates:
  - (a) Any of the provisions of this chapter commits a **misdemeanor** of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
  - (b) Section [119.105](#) F.S. commits a **felony** of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).



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## Yes, you can go to jail for this too.

### Martin County's Sarah Heard Indicted and Booked for Public Records Violations

By [BARBARA CLOWDUS /SOURCE/](#)  
January 5, 2018 • 8:15am



The story of Florida public records law violations in Martin County moved further into the public light Thursday for County Commissioner Sarah Heard and former commissioner Anne Scott.

Heard was indicted and booked on two criminal counts of violating public records laws, according to the Martin County Sheriff's Office. She was released on her own recognizance after her fingerprints and mug shot were taken.

Her charges are criminal misdemeanors that could lead to a fine and/or jail time if she's found guilty. She also could be removed from office by the governor.

Thursday's charges were in addition to a previous non-criminal infraction filed by the prosecutor Nov. 27 for not responding to a public records request in January 2013, to which she pleaded not guilty.

A hearing date was set for Feb. 19. The state prosecutor informed Heard's attorney, Barbara Kibbey Wagner, during a December court hearing that five days needed to be set aside for the hearing due to the case's complexity.

Officials close to the case, however, anticipate the additional misdemeanor charges will result in a request for a hearing continuance. Heard also may now ask for a jury trial, if she pleads not guilty.

Heard is up for re-election in August for the District 4 County Commission seat; however, she has not yet filed, according to Martin County Elections Office records.

Former commissioner Scott, of Jupiter Island, also was charged Thursday with two additional criminal misdemeanor counts of violating public records laws. She, too, was booked and released on her own recognizance, according to the Martin County Sheriff's Office.



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## Lawsuits are no bargain.

### Lawsuit alleges Sarasota city manager broke public records law

Source: Herald Tribune  
By: Nicole Rodriguez – Staff Writer

The suit asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law.

SARASOTA — A lawsuit filed Thursday against Sarasota City Manager Tom Barwin and the city alleges that the top administrator's frequent failure to produce city-related discussions from his private Gmail account as part of numerous public records requests broke state open records law and eroded public trust in local government.

The suit, filed by Michael Barfield, a paralegal consultant and president of the Florida American Civil Liberties Union, asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law, which is intended to guarantee that citizens have access to public records and the decision-making of governmental officials. The 23-page suit requests a judge to order Barwin and the city to follow the law, make records on Barwin's personal electronic devices available for inspection, pay Barfield's legal fees and award any other relief the court deems appropriate.



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**Perpetuate**  
**Communicate**  
**Formalize**



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**Thank You!**

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