

# Memorandum

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**To:** Honorable Mayor & Town Council of the Town of Juno Beach, Florida

**From:** Zackery Good, Esq., Town Attorney

**Date:** December 10, 2025

**Re:** Public Records, Confidential and Exempt Records

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Florida's Public Records Law, Chapter 119, Florida Statutes, provides a right of access to the records of state and local governments, as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate, or formalize knowledge. This memorandum will address public records generally, exempt and confidential records, and penalties for violations of the Public Records Law.

## **Public Records Generally**

Section 119.011(12), Florida Statutes, defines "public records" 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 Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

## **Exempt and Confidential Records**

Article I, s. 24(c), Florida Constitution, authorizes the Legislature to enact general laws creating exemptions provided that such laws “shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.” “The Constitution allows for the legislature, not the courts to provide for exceptions to the public records act.” *Cruz v. State*, 297 So. 3d 154 (Fla. 4th DCA 2019). *See Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (statute providing an exemption from the Sunshine Law for portions of hospital board meetings is unconstitutional because it does not meet the constitutional standard of specificity as to stated public necessity and it is broader than necessary to achieve its purpose).

There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Act *and confidential*. *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004). *And see State v. Wooten*, 260 So. 3d 1060, 1069-1070 (Fla. 4th DCA 2018) (Ch. 119, F.S., refers to both “exempt” records and records which are “confidential and exempt”). If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute. *Id. And see* AGOs 08-24, 04-09 and 86-97.

If records are not made confidential but are simply exempt from the mandatory disclosure requirements in s. 119.07(1), Florida Statutes, the agency is not prohibited from disclosing the documents in all circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3) (d), F.S. [now s. 119.071(2)(c), F.S.], “active criminal investigative information” was exempt from the requirement that public records be made available for public inspection. However,

as stated by the court, “the exemption does not *prohibit* the showing of such information. There are many situations in which investigators have reasons for displaying information which they have the option not to display.”

Once an agency has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information. *Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988). *Cf.* AGO 01-74 (taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F. S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute).

Importantly, if the Legislature is “clear in its intent,” an exemption to the Public Records Act may be applied retroactively. *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (statute exempting autopsy photographs from disclosure is remedial and may be retroactively applied). *See also Palm Beach County Sheriff’s Office v. Sun-Sentinel Company, LLC*, 226 So. 3d 969 (Fla. 4th DCA 2017); *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986); and *Roberts v. Butterworth*, 668 So. 2d 580 (Fla. 1996). *Cf. Cebrian By and Through Cebrian v. Klein*, 614 So. 2d 1209 (Fla. 4th DCA 1993) (amendment to child abuse statute limiting access to unfounded reports was remedial in nature and therefore applied retroactively); AGO 11-16 (applying exemption to a public records request received before the statute’s effective date because the legislation creating the exemption states that it “applies to information held by an agency, before, on, or after the effective date of this exemption”); and AGO 94-70 (amendment to expungement statute appears to be remedial and,

therefore, should be retroactively applied to those records ordered expunged prior to the effective date of the amendment).

### **Violations of the Public Records Law**

Section 119.10(1)(b), Florida Statutes, states that a public officer who knowingly violates the provisions of s. 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both. *See State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) (s. 119.10[1][b] authorizes a conviction for violating s. 119.07 only if a defendant is found to have committed such violation “knowingly”; statute cannot be interpreted as allowing a conviction based on mere negligence).

Section 119.10(1)(a), F.S., provides that a violation of any provision of Ch. 119, F.S., by a public officer is a noncriminal infraction, punishable by fine not exceeding \$500. *Cf.* s. 838.022(1)(b), F.S. (unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such an act).

A state attorney may prosecute suits charging public officials with violations of the Public Records Act, including those violations which may result in a finding of guilt for a noncriminal infraction. AGO 91-38.

### **Attachments**

Appendix D to the Government in the Sunshine Manual – Exempt and Confidential Meetings and