

Florida Public Records Law: A Guide for Local Officials

Ensuring Transparency and Compliance

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What is a Public Record?

Just about everthing

Statutory Definition

- All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form.

The Key Test

- Was it made or received "in connection with the transaction of official business"?

What is and What isn't

- Start from the position that any record is a public record.
- Includes texts, social media posts, and personal emails accounts if they pertain to agency business.
- Not Personal notes that do not "perpetuate, communicate, or formalize knowledge" (e.g., a "thank you" sticky note).

Incomplete or Unfinished Records

- **Don't** refuse a request because the record is "preliminary" or "unfinished".
- **Drafts/Working Copies:** If a draft has been circulated for review, comment, or information, it is a public record—even if it is not in its "final" form.
- **Personal Notes:** These are only exempt if they are "merely preliminary materials" intended solely for the employee's **personal use** to remember things and have not been shared.

Who is covered?

Just about Everyone



Covered Entities

- **Agencies:** Every state, county, and municipal officer and department.
- **Private Entities:** Private companies "acting on behalf of" a public agency (e.g., waste management contractors).
- **Officers-Elect:** Requirements apply the moment you are elected, even before you take the oath.
- **Custodians:** Every employee is technically a "custodian" of the records in their power to release.

Receiving Public Records Requests



✓ Any Medium Counts: Requests can be made in writing, via email, over the phone, or in person during a casual conversation.



✓ No "Magic Words": A requestor does not need to cite Chapter 119 or use the phrase "public records request" to trigger your legal obligations.



✓ Anonymous Access: You cannot require a requestor to provide their name, address, or reason for the request as a condition for seeing records.



✓ Immediate Acknowledgment: Best practice is to acknowledge receipt within 24 to 48 hours to demonstrate good faith.

Best Practice

- Have a single point of contact for public records requests
 - (PublicRecords@sao8.org)
- Publish that this is proper location for all requests
- Train employees to forward all requests here, no matter how they are received.
- Copy the Requestor telling them that the request has been forwarded.

Timing of Response



No Fixed Deadline: Florida law does not give a specific number of days (like 5 or 10) for a final response.



The "Good Faith" Requirement: You must respond within the time it reasonably takes to:

Locate the records.
Review for statutory exemptions.
Perform necessary redactions.



Unreasonable Delays: A delay is "unreasonable" if it is caused by administrative hurdles, lack of staffing, or an attempt to frustrate the requestor.

Getting Sued

This is going to be bad

Disputes and Going to Court

- You have the Burden of Proof for exemptions, redactions, and reasonableness of delay.



Posting Custodian Contact Information

- **The Posting Requirement:** To enforce the 5-day pre-suit notice requirement, an agency **must** prominently post the contact information for its custodian of public records in two specific locations:
 - **Primary Administrative Building:** In the building where public records are routinely created, sent, received, or requested.
 - **Agency Website:** If the agency maintains a website, the information must be posted there as well.

Contract Requirements:

- Any public agency contract for services must include the custodian's contact information in at least 14-point boldfaced type per Section 119.0701, F.S..

Attorney's Fees (The Hammer)



If a court finds an agency unlawfully refused a request, it must award the requestor's reasonable attorney's fees and costs against the agency.



Agencies are liable for fees even if they made an honest mistake or acted in good faith

Civil vs. Criminal Violations

	Civil	Criminal
Standard	"Unintentional" or "Non-knowing" failure to comply.	A "knowing" and "willful" violation of the law.
Penalty	Noncriminal infraction; fines up to \$500.	1st Degree Misdemeanor; up to 1 year in jail and \$1,000 fine.

Retention Periods

Nah, Nah, Nah, Na, Hey – Hey, Good-bye

One of the
Best Ways to
Minimize
Work is to
Destroy
Records in
Accordance
with State
Law



How Long is email required to be maintained?



Phone logs?



If you don't have it, you can't be required to provide it.



Record Destruction Dates

How Long Must We Keep It?

- **The Rule-Maker:** The Florida Department of State, Division of Library and Information Services sets the legal minimum retention periods for all public records.
- **GS1-SL Schedule:** Most city and county records fall under the General Records Schedule GS1-SL for State and Local Government Agencies.



Common Statutory Exemptions

Personnel Records & Social Security Numbers



THE EXEMPTION: SOCIAL SECURITY NUMBERS OF ALL CURRENT AND FORMER AGENCY EMPLOYEES ARE CONFIDENTIAL AND EXEMPT FROM PUBLIC DISCLOSURE.



MEDICAL INFORMATION: MEDICAL DATA PERTAINING TO PROSPECTIVE, CURRENT, OR FORMER EMPLOYEES WHICH WOULD IDENTIFY THEM IS EXEMPT.



DISCIPLINARY RECORDS: WHILE SOME DISCIPLINARY RECORDS ARE PUBLIC, CERTAIN RECORDS RELATED TO EMPLOYEE MISCONDUCT INVESTIGATIONS REMAIN EXEMPT UNTIL THE INVESTIGATION IS CONCLUDED OR BECOMES INACTIVE.



AUTHORIZED DISCLOSURE: THESE RECORDS MAY ONLY BE DISCLOSED IF REQUIRED BY FEDERAL/STATE LAW, COURT ORDER, OR WITH THE WRITTEN CONSENT OF THE EMPLOYEE

Active Investigations & Audits

Active Criminal Investigations: Active criminal intelligence and investigative information are exempt while a good faith investigation is ongoing with a reasonable anticipation of arrest or prosecution.

Internal Agency Audits: Audit workpapers and notes are confidential and exempt until the audit is complete and the report becomes final.

Misconduct Investigations: Records related to internal complaints against employees remain exempt until the investigation is concluded or notice is given to the employee.

Defining "Active": An investigation is considered active as long as it is continuing with a reasonable, good faith anticipation of resolution.

Bids and Proposals



Temporary Exemption: Sealed bids, proposals, or replies received by an agency are exempt from public records requests for a specific period.



Timeline for Release: These records remain exempt until the agency provides notice of an intended decision or 30 days after the bids are opened, whichever occurs first.



Rejection and Re-solicitation: If all bids are rejected and the agency intends to re-solicit, the records remain exempt for up to 12 months or until a new notice of intended decision is posted.



Public Access: Once the intended award is announced or the 30-day window closes, the proposals become public and available for inspection.

Summary and Conclusion

Summary & Best Practices



- **Transparency First:** When in doubt, the law favors disclosure.
- **Document Everything:** Keep a log of your "search time" and any communication regarding the request.
- **Trust the Legal Team:** Always consult your City or County Attorney before making a final denial.
- **Be Consistent:** Apply your Public Records Policy the same way for every requestor, every time.

Consult Your Lawyer

- **Expert Consultation:** Always consult with your **City or County Attorney** before issuing a final denial of a record.
- **Exemption Verification:** Legal counsel can confirm if a specific Florida Statute (e.g., F.S. 119.071) correctly applies to the redaction you are making.
- **Litigation Shield:** Involving your attorney early can help avoid costly lawsuits and ensure the agency is following the latest legislative updates.
- **The Final Word:** Do not take the risk of a "wrongful refusal" without legal backing.

Be Consistent

- **Uniform Application:** Apply your Public Records Policy the **same way** for every requestor, every time.
- **Neutrality:** Whether the request comes from a journalist, a political opponent, or a resident, the process and fees must remain identical.
- **Avoiding Discrimination:** Inconsistent handling of requests can be cited as "bad faith" or "harassment" in a legal proceeding.
- **Predictable Workflow:** A consistent policy makes it easier for staff to manage high volumes of requests without confusion.

If You Don't Know, Ask—Don't Guess

- Guessing about an exemption or response time can lead to a **civil infraction** and a fine of up to **\$500**. More importantly, an incorrect "guess" that leads to an unlawful refusal triggers **mandatory attorney's fees** that the agency must pay to the requestor.

Preserve
over
Destroy

- Before you hit "delete" on a message or "deny" on a request, stop. If you are unsure whether a specific document—like a text or a draft—is a public record, do not make an immediate decision.

Thank You – Call if you
need us

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