



CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
**CAROLYN TIMMANN**  
MARTIN COUNTY, FLORIDA

*Public Records and Ethics*  
*in the*  
*Sunshine State*





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**A Constitutional Officer's  
Practical Approach  
To Handling  
Public Records**



# CLERK OF THE CIRCUIT COURT AND COMPTROLLER CAROLYN TIMMANN MARTIN COUNTY, FLORIDA

## Clerk of the Circuit Court and Comptroller

- Custodian of Public Records
- Public Trustee
- Custodian of County Funds
- County Auditor





## Florida Statutes & Constitution

### *The Florida Constitution*

ARTICLE I, SECTION 24. Access to public records and meetings.—(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.



## **Public Records Defined . . .**

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.



FLORIDA SUPREME COURT  
www.floridasupremecourt.org

## **Public Records Defined . . .**

### **Supreme Court Interpretation**

The 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.

# Public Records Defined: What is a Record?

Transaction of official business by any agency

Communicate or formalize knowledge

All shapes and sizes

## **Examples:**

- "Hey, I'm running 10 minutes behind." "Happy Hour at 5:15!"
- "Here's my Christmas List" "My child is sick - I have to leave"
- "Machines 3 and 7 aren't processing correctly. Get someone over here now to get them fixed before anyone suspects we have a problem."
- "We need to make sure the Commissioners know why we need that increase"

**Transitory - Does not need to be retained.**

**Personal - Does not have to be retained.**

**"Official business" - Must be retained.**

# What is a Custodian?

Ch. 119, Florida Statutes:

(5) “Custodian of public records” means 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.

**The Ledger.com**

*Dec. 6, 2014*

**Bad Actors Abusing Laws** - The citizen's right to know is sacrosanct.

. . . When approached, the guy on the mower doesn't know what to do and asks for contact information so he can relay the request to a supervisor, but that constitutes a violation. (The law provides anonymity to the requester.) Then the jurisdiction receives a threat of a lawsuit, which can be settled for a cash payment.

Be Ready for the Test . . . Sunshine Week!





## *Train Your Staff*



### **Florida nonprofit's ties to law firm questioned after dozens of lawsuits filed**

*Tristram Korten and Trevor Aaronson 3:51 PM, Dec 6, 2014*

Since January, the foundation and a sister group, Our Public Records LLC, have filed more than 140 lawsuits in 27 counties

Barbara Petersen, president of Florida's First Amendment Foundation, said there is nothing in state public record law prohibiting "gotcha" lawsuits. Her concern is these suits could lead to further erosion of Florida's public records laws.

"That's extremely unfortunate, as the vast majority of those who are making public records requests are doing so because they want the records, and any attempt to scale back our right of access will have the biggest negative impact on citizens," she said. "All because of a couple of bad actors."



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What does that mean in today's world of cell phones and social media?



You will notice that neither the Florida Statutes or Supreme Court definitions directly address any type of the following:

- Social Media Postings, such as Facebook, Twitter, Tumblr
- Text Messages
- Instant Messages
- Transcribed voicemail messages, such as AUDIX

**ALL OF THE ABOVE ARE PUBLIC RECORDS AND SUBJECT TO THE RECORDS RETENTION AND DESTRUCTION GUIDELINES.**

# Social Media and E-Mail Snafus . . .

**What's Wrong With This Picture?**



**Did I just Post This?**



# Did I Really Just Hit “Send”?

*Under Florida law, email addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone. The content of all e-mails becomes subject to public disclosure under the Public Records Law and users should govern themselves accordingly.*

**Remember: Where there's a Sender, there's a Receiver . . . or many.**

## **Top adviser avoids creating public records as she shapes Governor's policy, e-mails show**

By Michael C. Bender, Times/Herald

"I rarely check and almost never respond to work e-mail because of the open records law," [she] wrote from her private e-mail account.

## **'What a jerk': Private messages from Florida PSC commissioner reveals distrust in agency**

Palm Beach Post, Oct. 19, 2009 |

Of the nearly 3,000 PIN messages recovered, [she] had more than 2,400.

# *Stop and Think*

## **Texting by public officials: Does it violate Sunshine laws in meetings?**

May 2, 2009 | By Ludmilla Lelis, Sentinel Staff Writer

Text messaging is an everyday habit for many, but if public officials use it to talk about public business, they could be violating the law.

Best Solution: Don't text public business

State Agency Ban

It's not the Device; it's the Content!



# Travel and Expense Records: What Will Your Constituents Think?

## ▶ Travel Voucher Pitfalls:

Clear Public Purpose

- ▶ Room service – no public purpose
- ▶ Dinner at Gilley's Bar – allowable, but watch the optics

### ***County Employee Credit Card Records Show Las Vegas Trips, Stays at Luxury Hotels Curtailed***

by P.D. Lesko, Ann Arbor Independent

In 2013, The Ann Arbor Independent published articles detailing county employee stays at Las Vegas casinos, resorts and 4-star hotels at taxpayer expense.

- ✘ GSA official's wife accompanied him on trips at taxpayer expense
- ✘ South Florida Water Management District spends tax dollars at lavish resorts
- ✘ Some New Orleans judges billed public for multi-room condos at Florida resort's event
- ✘ Elected Official Likes Breakfast in Bed
- ✘ Official Spends Most of Time at the Bar During Business Trips

# Protecting Confidential and Exempt Information

“Exemption” means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. [119.07](#)(1), s. [286.011](#), or s. 24, Art. I of the State Constitution.

Addresses  
Phone Numbers  
Spouses & Children  
Email Address – No

## Duties of Employers:

Personnel Records

## Duties of Custodians:

Written Requests

Voted Ballots are Public Records because they have “memorialized the act of voting.” Fla. 2005

Absentee Ballots: s. 101.62(3) – Confidential & Exempt except for specific use (Political)

This information shall be confidential and exempt from s. [119.07](#)(1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees for political purposes only.

Data Processing Software (as in [119.07](#)(1), F.S.)  
s. [101.5607](#)(1)(d) - All data processing software on file with Dept. of State

# Exempt & Confidential and Redaction

## s. 119.07(1)(e) and (f)

(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.

**Redaction Software:** A tool, not a solution

### **Charging for Redaction:**

Public or Personal Information

### **No General Exception for Personnel Files for Government Employees**

### **Only Specific information can be Redacted:**

- ✓ Social Security Numbers
- ✓ Medical Information
- ✓ Direct Deposit Records
- ✓ Home Addresses of SOME employees (ie. Judges) upon request



## DIVISION of LIBRARY and INFORMATION SERVICES

# Retention and Destruction

Department of State - Division of Library and Information Services - Records Management

There are two sides to the equation, both are equally important.  
Content is the Key

GS3 – Election Records

GS1-SL – State and Local Government Agencies

Proper recordkeeping for retention and destruction:

- ✓ Adhere to the Official Schedule
- ✓ Detailed Destruction Orders
- ✓ Witness the Destruction – Affidavits

## Violations: What are the potential 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.

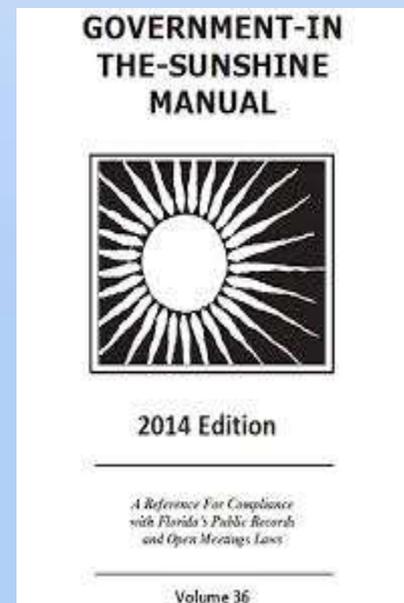
A public officer who intentionally violates the public records law is subject to suspension or removal from office.

Attorney's fees and court costs are available to the requestor that prevails in a civil suit for access.



# How to Avoid the Less-than-Flattering Headlines

- ✓ Understand the Definition of Public Records
- ✓ Be Aware of Retention and Destruction Schedules
- ✓ Work with the Public and the Press
- ✓ Train Yourself and Your Staff
- ✓ Stay Informed: Buy the Book or Go Online



# Email or Text or Tweet or IM . . . So Many Choices and So Many Records!

- **Any Format**
- **Any Means of Transmission**
- **Use of Personal Devices**
- **Use of Personal Email Accounts**

- Personal v. Official Business
  - Employer's Role
- Preserving those Records
  - No matter what you wrote or when or where you wrote it
  - Challenges of Preserving Texts, IMs, Tweets
- What are your employees writing and when?
  - Should I monitor?

# Means of Transmission

## Personal Devices



Requests for Call Lists





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**Working  
with the Public  
and the Press**

# *The Headlines you never want to see*

## *aka – Waking up to a Bad Day at the Office*

**Florida Gov. Rick Scott's Transition Emails Accidentally Deleted:**  
Emails sent and received during Florida Gov. Rick Scott's (R) transition into the governor's mansion were accidentally deleted soon after he took office. *Miami Herald*, 8/22/11

**Florida Governor and Attorney General Sued Over Public Records**  
CBS Miami, 11/25/13

**Delaware governor's errant tweet shows racy photo** 9/4/14

**Website preserves politicians' deleted Twitter posts: Politiwoops**  
PHOENIX (CBS5) - Politicians use social media to get their message across. We also know their tweets can get them in trouble, and the power of the "delete" button has been weakened thanks to a new website called "Politiwoops." CBS5, 6/5/12

Sept. 2014 -- The Manatee County School District is set to award \$21,000 to Plaintiff in a public records settlement. Plaintiff sued the school district after officials failed to comply with his public records request. The district won the initial trial, but lost an appeal.

# Responding: Four Steps to Success

1. Acknowledge the Request
2. Be honest and have an open dialogue about their goal so you can help narrow the search and provide the information that they need.
3. Clarify the Request - DO NOT GUESS . . . this can lead to trouble
4. Produce the record that was requested

**REMEMBER:** A records request is a snapshot, it is not a recurring report

Ex. The number of employees in the SOE office who have a salary of over \$100k.

Clarifying questions –

- do they want names, titles or just total #
- how many years
- gross salary
- itemize any payouts (DROP, Leave Payout, Bonus)

# Responding to Requests

Forms are great tools and helpful to the public (especially for late-night requestors), but . . .

- ▶ You cannot require a form
- ▶ You require the requestor to identify themselves
- ▶ You cannot require the requestor to state the reason for the request
- ▶ You cannot ask the requestor to disclose why they want the information

Train your staff to avoid these pitfalls.

Also, remember that you don't need to create a new record to respond to a request. But, sometimes it may be most helpful if you do.

Ex. Request for a list of all donors whose name begins with the letter A. If you do not have such a list, you do not need to prepare a new record to respond to the request.

# FLORIDA HAS A RIGHT TO KNOW

## Holding Government Accountable



Develop a good method for successfully working with the Public and the Press

A strong records request policy is your best defense and good public policy (Orange County)

Your website can work for you – put common requests on your website





## **Fees & Costs: How Much Do I Charge?**

Provide an Estimate before you start the work – and keep track of time

- ④ Actual cost for reproduction  
(.15/page, price of CD or Flash Drive)
- ④ Extensive Use of Resources – Define it!  
Technology Fees  
15 Mins. or Two Hours?
- ④ Personnel Time – lowest paid person capable of performing  
the task, including salary and benefits
- ④ Set a Policy Minimum

# What is a Reasonable Time for Response?

## Retrieve, Review, Redact, Respond

Is a three-month delay for public records, really ‘open government?’

S.Singer, Palm Beach Post, 12/6/14

Public Information v. Public Records :

You don't want to look foolish if the information is readily available.

Ask for timeframe, but know that your obligation is “reasonable time”.

Stay in touch with the Requestor, if possible.

Ask for the best way to stay in touch with Anonymous requestors.

# Mode of Production



- **Paper** – Copying fees are statutory
- **Email or FTP site**
- **Digital/Electronic** (such as DVD, Thumb Drive) – actual cost of duplication, defined as cost of materials and supplies to duplicate the record
- **Photographs by Requestor** – includes cell phone, portable scanner. 119.07(3)(a) F.S. states requestor must be given access to public records for the purpose of making photographs; 119.07(3)(b) further includes the use of a camera device to capture images of public records.
- **Onsite Review** – generally there is no charge for requestor to inspect the records unless supervision is required. If so, an extensive use fee can be charged.



# **ETHICS and GOVERNMENT IN THE SUNSHINE**

When in doubt, don't do it.

If you will have to explain and answer questions when the story breaks in the media, don't do it.

Ask yourself what you would think if a colleague did the same thing.

If you are going to have a hard time telling your mother what you did, don't do it.



## Sunshine Amendment

This amendment created [Article II, Section 8](#) of the Florida Constitution to require full public disclosure by state and county elected officials and candidates for financial interests and campaign finances. It requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges.

The measure was also the first successful constitutional initiative in Florida history.

# Code of Ethics

## **No public officer shall . . .**

Corruptly use or attempt to use his or her official position or any resource which may be within his or her trust or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. s. 112.313(6) F.S.

## **Corruptly, what does it mean?**

- Engaging in conduct inconsistent with the proper performance of your duties
- Knowing the conduct is wrong
- Intending to gain a personal privilege, benefit or exemption

# Misuse of Public Position

- Public administrators should be held to a higher standard than others. S. 112.313(6), F.S.
- Higher standard of ethics does not imply a different standard of morality.
- It means more scrupulous adherence to accepted standards.

Code of Ethics, Chapter 112, Florida Statutes

# Annual Financial Disclosure

Disclosure of certain assets, liabilities and sources of income.

## County Commission Chair Slapped With Ethics Complaint

By: Nancy Smith | Posted: July 15, 2014

The state of Florida is currently processing an ethics complaint against [a] County Commission Chairman for fudging the value of her [residence] by more than \$400,000 and deliberately excluding details of property she owns in Illinois and North Carolina.





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## 2014 Changes to the Ethics Laws

- ❖ Beginning with the financial disclosure forms that are due July 1, 2015, there will be a check box on the form for filers to certify that they have completed the required training.
- ❖ Elected official is responsible for maintaining their training records
  - ✓ Keep a Spreadsheet or Table (Create a Record!)
  - ✓ Send a Copy to Your Professional Association
  - ✓ Issue a Press Release if you add Certifications

### **Training is required to include**

- ☑ Article II, Section 8 of the Florida Constitution (Ethics in government)
- ☑ Part III, Chapter 112, Florida Statutes (Code of Ethics)
- ☑ Public Records
- ☑ Public Meetings (Sunshine Law)



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## Public Records Additional Resources

Office of Attorney General Pam Bondi website:  
<http://www.myfloridalegal.com>

Governor Rick Scott website:  
<http://www.flgov.com>

First Amendment Foundation website:  
<http://www.floridafaf.org>

# QUESTIONS?