

# **Public Records 'Working in the Sunshine'**

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Public Records  
Public Records Requests  
Exemptions  
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Words of Advice

# Public Records: Why do we have it?

- Long Florida history of “Government-in-the Sunshine” laws dating back to 1909.
- Broad access to government proceedings and documents
  - Chapter 119, Florida Statutes (Public Records)
  - Chapter 286, Florida Statutes (Public Business) (particularly s.286.011, Florida Statutes re public meetings and records)

# Public Records: Broad definition

- Documents . . . Papers . . . Letters . . . Maps . . . Books . . . Tapes . . . Photographs . . . Films . . . Sound recordings . . . Data processing software. . . or Other Material (e.g. e-mails, computer records, drafts circulated, etc., etc.)
- Whatever physical form . . . characteristics . . . means of transmission
- Made or Received
- Transaction or in course or in connection with official business
- Used to perpetuate, communicate or formalize knowledge
- By any agency

# Public Records: Examples

- Facsimile
- E-mails (not if wholly personal content)
- Video
- Audiotape
- CDs, DVDs
- Postings on an agency's social networking site such as Facebook
  - Nature of the record (not physical location or physical form) dictates whether it is a public record and what applicable retention schedule should apply
  - Custodian legally responsible for supervision, care, maintenance, control or guardianship of the record

# PR Requests: Who asks/who gives?

- Any PERSON can request
- In Any MANNER (in writing or orally)
- For Any REASON
- From Any AGENCY to inspect and/or copy (Agency includes any State... County ... District ... Authority... Municipal officer ... Department ... Division ... Board ... Bureau ... Commission ...or other separate unit of government, or any other public or private agency . . . Person. . . Partnership. . .Corporation . . . or Business entity acting on behalf of any public agency, or created or established by law.
- Any PUBLIC RECORD not otherwise exempt

# PR Requests: How and When to Comply?

- **Acknowledge receipt of public records request.**
- **Respond in good faith.** That includes making reasonable efforts to determine from other agency officers and employees whether record exists and how to access.
- **Provide estimated time to respond and cost to produce.**
- **Allow for inspection and copying at any reasonable time under reasonable conditions and under custodian's supervision.**
- **Identify any applicable exemptions.**
- **Provide in reasonable time under reasonable circumstances.**

# PR Requests: What to give?

- Public records *except what is exempt under law (not an excuse not to give if you have copy of record but you are not official custodian)*
- **What already exists and in format maintained--**No duty to create records or reformat just to respond to requestor's request
- **Duty may exist to create or provide access through specifically designed program, at requester's expense if:**
  - Records stored in the computer not accessible in existing computer program format
  - Current format does not protect confidential and exempt information
  - Current format does not fairly or meaningfully represent the record
  - Court decides exceptional circumstances exist



# PR Requests: How much?

- **Fees for duplication:** Actual cost
- **Copying document fees:** 15 cents per one-sided and 20 cents for two-sided, unless law says otherwise
- **Fees for certified copies:** \$1 per copy of record
- **Special service charge:** If nature or volume of request requires extensive (“more than 15 minutes to locate, review for confidential information, copy, and re-file the requested material”) use of information technology resources, or of clerical or supervisory assistance. See Section 119.07(4)(d), F.S.; R1-2.0031, Florida Administrative Code. (e.g., public inspection of official ballots, all e-mails from 2002 through 2005, or all original voter registration applications from 1986 through 1996.

# Public Records Request: What if there is a dispute?

- ✓ Attempt to resolve
- ✓ Participate in Voluntary Mediation Program with the Florida Attorney General's Office. See s.16.60, F.S.
- ✓ (Expect) judicial action by requestor if not resolvable (mandamus or injunctive relief)
- ✓ Request opinion from Attorney General's Office regarding a construction or interpretation of a public records provision

# Public Records Exemptions

- Created by the Legislature
- Must state specifically the need that justifies the exemption
- Must be no broader than necessary to accomplish the stated purpose. Article I, s. 24, Florida Constitution
- Strictly construed
- Designated as “exempt” or “confidential and exempt” (more strict—only disclosed as stated in law-no exceptions)
- Applied differently in discovery in litigation

# PR Exemptions: Agency Responsibility

- **Maintain the confidentiality and exempt status** of your agency public records and those of any other agency document or information that you may have received through the course of official business.
- **Before release or disclosure, REVIEW and REDACT all confidential and/or exempt information/document/material.**
  - Redact only that part that is exempt unless whole document or material is exempt.
  - Do not alter/mark original document/material. Make copy and then redact on copy.
- **Identify the specific statutory exemption you rely upon to redact the information/document/material.**

# PR Applicable Exemptions for Elections: (not exhaustive)

## Voter applicant/registered voter's

- Social security number
- Florida driver's license /state identification number
- Voter registration agency where a person registered to vote or updated his or her voter registration
- Signature [from copying only--may be inspected]
- Whether a person declined to register or update records

Otherwise ALL voter registration information/records is public record (e.g., political party affiliation, addresses, phone numbers, date of birth, and voting history. Section 97.0585, F.S. See also section 119.071(5), F.S.

# PR Applicable Exemptions for Elections: (not exhaustive)

**Address/identification confidentiality of certain classes of high-risk professionals** (active and former state or federal judicial or quasi-judicial or administrative law judges, local, statewide, or federal prosecutors, public defenders and other criminal or civil regional counsel, human resource/labor relations officers, law enforcement officers, corrections officers, probation officer, code enforcement officers, guardians ad litem, child abuse investigators, certain Department of Juvenile Justice personnel, certified firefighters, social services counselors (request may extend to their children and spouses---active or former profession-- exemption lasts forever even if divorce or child is adult. (See sections 119.071(4)(d)1., 119.071(5)(i), Fla. Stat.

- **Home address, telephone number, photo, social security number** (varies according to profession)
- **Not automatic-Written request is needed to apply exemption**

# Applicable PR Exemptions:(cont'd)

- **Driver's licensees' information.** Section 119.0712(2), F.S.
- **DAVID DL/State ID Photos-Signatures** ("Driver and Vehicle Information Database" Section 322.124, F.S.
- **Official ballots and ballot cards**(while in custody of supervisor/canvassing board)--special hybrid exemption: may be inspected and copied but cannot be handled or touched by any other person other than the supervisor of elections or employees. Sections 119.07(5), F.S.; 101.572, F.S.

# Applicable PR Exemptions:(cont'd)

- Domestic violence victims—name, address, phone number—victims must be *registered* with ACP (Attorney General's Office program for Address Confidentiality). Section 741.465, F.S.
  - Stalking victims—name, address, phone number—victims must file 'statement of stalking' AG's ACP. Section 97.585(3), F.S.
- Registration information for these AG program participants are processed entirely manually and outside of the Florida Voter Registration System.*
- Victims of certain violent crimes—only address and other identifying information exempt--written request for exemption must include official verification of crime (this is not an ACP participant; person is still registered on rolls.) See s. 119.071(2)(j), F.S.



# Applicable PR Exemptions: (cont'd)

- **Absentee ballot request information** that is collected or received to process an absentee ballot request. *Section 101.62(3), F.S.* The fact that someone voted absentee IS NOT exempt from disclosure after election
- Exceptions to exemption: *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, a registered political committee, a registered committee of continuous existence, and a voter (only his or her own information)*
- *See DS-DE 70/R1S-2.043—Example of form used by State to control access to absentee ballot info (user id and password provide online access and expire at end of year)*

# Applicable PR Exemptions:(cont'd)

- **User identification and passwords held by the Department of State pursuant to electronic filing of solicitation and campaign contributions. Section 106.0706, F.S.**
- **All campaign reporting records until report is finally submitted. Section 106.0706, F.S.**
- **Sworn complaints regarding campaign financing until determination of probable cause, or other subsequent proceeding. Section 106.25(7), F.S.**

# Applicable PR Exemptions:(cont'd)

- ✓ **Minimum security procedures are not exempt EXCEPT as pertains to the part that may contain:**
  - 1. Data processing software** either as a trade secret or agency produced data processing software that is sensitive. See sections 119.071(1)(f); 812.081; 101.5607(1)(d), Fla. Stat. (all voting system software filed with state).
    - Software prepared by state is NOT exempt from chapter 119, Fla. Stat.

# Applicable PR Exemptions:(cont'd)

- 2. Information relating to security systems and plans (that would include any information that would compromise the security of the voting system by facilitating modification, disclosure or destruction of data or information technology resources** (e.g., IP addresses, passwords, list of those with access, etc.) (s. 119.071(3)(a); s.281.301, Fla. Stat. 2005). Reason for exemption is shown by the following example: If access to a secured system is based on an integrated user identification and password format that uses authorized users' names or parts thereof and other personal identifying information and that incorporates a particular user access sequence, release of such information coupled with other information in public domain could directly or indirectly be used to figure out how to decode the security system. The public disclosure of modem numbers could be used to tie up phone lines leading to a collapse with a computer system.

# Public Records Management

- **Law requires retention, record-keeping, storage, and disposition** ( See section 257.36, Florida Statutes)
- **Oversight by Division of Library and Information Services oversight/Bureau of Records Management**
- **Promotes efficient, effective and economical management of public records** (space savings, increased efficiency of information and document retrieval especially for responding to public records, better identification and protection of records, control over creation of new records.)

# PR Records Management: RETENTION

- **Retention schedule:** Establishes minimum time you must keep public records. If there is no applicable schedule item, you must keep records until specific one is created. *Adhere to the schedule: You cannot produce what you no longer legally have. Corollary: You have to produce what you do still have (even if the retention period has passed or you don't know where the record is.)*
- **Applicable schedule for Election Records: Schedule GS-3**  
<http://dlis.dos.state.fl.us/barm/genschedules/gso3.pdf>  
(Revised 9/2010 with last update to item #106 in 01/2011)

# PR Records Management: New and Revised Retention Items

Review revised and newly created retention items (category, description or retention period)

- *Absentee ballot envelopes (revised)*
- *Ballot inspection certification (new)*
- *Ballot on demand request records (new)*
- *Book closing statistics (new)*
- *Campaign and registration records: candidates/committees/parties (revised merger of existing)*
- *Conduct of election reports (new)*
- *Early voting reports (new)*
- *Election parameter records (new)*
- *Election returns (revised)*
- *Election security device records (new)*

# PR Records Management: New and Revised Retention Items

- *Inactive voter 'lists' (revised)*
- *Mail, undeliverable (revised)*
- *Mental Incompetency records (revised)*
- *Petition (constitutional initiative) balloted/unballoted records (revised)*
- *Petition (municipal recall) records (new)*
- *Petition signature cards (revised)*
- *Poll watchers records (revised)*
- *Poll workers records (revised)*
- *Precinct and polling place location records (new)*
- *Provisional ballot voters certificates (revised)*
- *Residential street address list/database (new)*



# PR Records Management: New and Revised Retention Items

- *Voter challenge records (new)*
- *Voter address list maintenance (revised)(retention period changed in January 2011)*
- *Voter registration records (revised)*
- *Voter eligibility case files (eligibles/ineligibles) (new)*
- *Voter information cards (revised)*
- *Voting equipment records series (new)*
- *Voting history records (new)*
- *Voting system overvote/undervote reports (new)*
- *Voting system security procedures (new)*

# PR Records Management:

## Unique records

- **Unused ballots, forms and other election materials:** May be destroyed upon Department of State's approval (no applicable retention schedule) Section 101.545, Fla. Stat.
- **Social Networking Sites used by Agency such as Facebook:** Facebook entries and postings are subject to same analysis in determining public records status, retention and exemption

# PR Records Management: Unique records- E-mails

- Examine content, purpose or nature of public records to determine applicable retention schedule.
- See also Retention Schedule for State & Local Govt at: <http://dlis.dos.state.fl.us/barm/genschedules/GS1-SL.pdf> (revised 11/2006 with updates in 08/2010)

Items #17 (administrative-3 fiscal years), item #338 (program and policy development-5 fiscal years provided applicable audit released); items #58,88 (if it relates to budget records, approved annual budget and support documents(items #58, 88, retain as permanent, and 3 fiscal years provided applicable audit released, respectively; item #146 (transitory message series if it primarily communicates information of short-term value like scheduled meetings or appointments, then retain until obsolete, superseded or administrative value is lost; item #27 (litigation series,5 years after case closed or appeal expired.).

# PR Records Management: ORIGINALS

## Paper versus Electronic

- **Master record** can consist of scanned or electronic copy of original public record--scanning must comply with imaging requirements and electronic recordkeeping rules & verification for completeness and accuracy of electronic records See Rules 1B-24, 1B-26.003, F.A.C.
- **Electronic/scanned version has same force and effect as original** for evidentiary purposes or authentication) Section 92.29
- **Applicable to voter registration applications.** See sections 98.461(1), 98.081, F.S. (applies also to registrations removed from the statewide voter registration system)
- **Disposition/destruction form must state that 'paper records are *duplicates* of electronic records "master record"**

# PR Records Management

- **Pending public records request:** If you receive a public records request for records scheduled for upcoming disposition, you cannot dispose of the record for 30 days after written request to inspect or copy. If court action taken in 30 days, you cannot dispose of records until court order. See s. 119.07(1)(h), Fla. Stat.
- **Assistance:** Contact your agency's records management liaison officer and/or the records managers with the State Library & Archives (850.245-6750). Seminars are offered frequently.

# Primary Government in the Sunshine Source

## Florida Attorney General's Website

- <http://www.myflsunshine.com/>
  - Sunshine Law Training (including videos on how law applies to electronic communications/social networking sites, to municipal and local government records, to identify and redact exempt information, and to recovery of fees and costs.
  - Mediation Program

# Words of Advice

- **“Don’t get burned.” (Sometimes you just have to sweat through the public records request)**
- **Respond to public records request in a reasonable and timely manner.**
- **Establish and maintain good records management procedures.**
- **Ask for clarification or guidance if you are uncertain:**
  - Agency records management liaison officer
  - Florida Department of State’s Records Management Center
  - Division of Elections/General Counsel’s Office/Florida Department of State
  - Attorney General’s Office for Advisory Opinions