

Government in the Sunshine and Public Records



Government in the Sunshine

Florida's Government in the Sunshine Law, found in Chapter 286, Florida Statutes, and Article I, Section 24, of the Florida Constitution provides a right of access to governmental proceedings of public boards and commissions.

Government in the Sunshine

The Sunshine Law applies to “any board or commission of any state agency”

This includes:

- Elected and appointed boards or commissions
- Advisory boards and committees
- Private organizations delegated authority to perform a government function or that play an integral part in the decision-making process, which includes recommendations. AGO 07-27

Government in the Sunshine

Requirements under the Sunshine Law:

- All meetings of public boards and commissions must be open to the public at all times;
- Reasonable notice of such meetings must be given; and
- Minutes of the meetings must be taken and open for public inspection.

❖ *Section 286.011, Florida Statutes and Article 1, Section 24, Florida Constitution*

What triggers the Sunshine Law?

- Two or more members gathered together to discuss issues on which foreseeable action or recommendations may be taken by the council.
- Telephone calls between members are included.
- Applies to all functions of the board or commission, formal or informal.
 - Not only official votes and recommendations (formal) but also deliberations and discussions (informal) leading up to them

What triggers the Sunshine Law?

- May not engage in written correspondence, including emails, regarding council matters.
 - Limited exception: Written report may be circulated, but no comments or discussion may be had until at a publicly noticed meeting. AGO 89-23. The written report is a public record subject to disclosure.
- Council meeting may be conducted by telephonic conference call as long as procedural requirements are adhered to. Quorum of members must be present on the call.

Procedural and Technical Requirements

- **Reasonable Notice**
 - Includes time, place, and agenda if available, or a statement of the general subject matter to be considered.
 - 7 days in advance, unless emergency session.
 - Notice should be published in the *Florida Administrative Register* and may be physically posted or placed on an agency's website.
- **Meeting Minutes**
 - Brief summary or memorandum reflecting the events of the meeting.
 - Verbatim transcript is not required. AGO 82-47.
 - Minutes should capture all members in attendance and their votes and/or recommendations.

Procedural and Technical Requirements

- **Public Participation**
 - Must allow the public a reasonable opportunity to be heard on a proposition before a board or commission before any official action, such as a vote, is made.
- **Reasonable Rules and Policies are Permissible.**
 - Ensure orderly conduct.
 - Limit comments to the items on the agenda.
 - Reasonable time limit of the length of the comments.
- **Should have large enough space to accommodate attendees.**

Procedural and Technical Requirements

- Avoid inaudible discussions.
- Open to the public means everyone - staff, media, public.
- Cannot prohibit the use of non-disruptive recording devices.
- If a council meeting is adjourned and reconvened at a later date, the second meeting must be noticed.

Penalties for Violations

- Courts interpret the Sunshine Law liberally and exceptions strictly.
- Actions taken at meetings held in violation of the Sunshine Law are void.
- Public officer who violates Sunshine Law is guilty of a non-criminal infraction; fine up to \$500.
- Member of board or commission who knowingly violates by attending a meeting not held in the Sunshine is guilty of a second degree misdemeanor.
- In litigation, payment of attorney's fees and costs to prevailing party.

What is a Public Record?

- Documents, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, other materials.
- Regardless of physical form, includes electronic records, emails, text messages.
- Regardless of location
 - Personal email used to communicate official business is a public record.
- Made or received pursuant to law or ordinance or in connection with the transaction of official business.
 - ❖ *Section 119.011(12), Florida Statutes*

What is a Public Record?

- Any material used to perpetuate, communicate, or formalize knowledge. See Shevin v. Byron, Harless et. al., 379 So.2d 633 (Fla. 1980).
- Agendas, minutes, and materials associated with the council.
- Record does not need to be in final form, may be draft.
- Emails and text messages in connection with council business whether sent from personal or business computer or phone.

What is NOT a Public Record?

- Personal drafts or notes for the sole use of the writer are not a public record. *See Shevin.*
 - If the drafts or notes are communicated to another or used in any way to perpetuate, communicate, or formalize knowledge, it is a public record. *See Shevin and Miami Herald Media v. Sarnoff, 971 So.2d 971 (3rd DCA 2007).*
- Personal emails or records not related to official business
 - Personal emails, especially on business system, could still be subject to review to ensure all public records have been disclosed.

What is NOT a Public Record?

- A record not in existence. Do not create a record to summarize or explain other records in response to a public records request.
- Be aware, if you create a record in response to a public records request, it becomes a public record.

Tips

- Consider each council related email to be a public record.
- Don't mix personal and council records
- Don't use personal email or text for council business
 - Text messages regarding council business are public records; avoid using text messages for council business.
- **DO NOT** destroy public records.

Public Record Requests

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.

❖ Section 119.07(1)(a), Florida Statutes

- No purpose or reason needs to be given for requesting records
- Requests are not required to be in writing.

Penalties for Violations

- Immediate hearing and agency must comply with court order within 48 hours. Section 119.07(1)(a), Florida Statutes.
- Reasonable costs and attorney fees will be assessed if public record was unlawfully withheld.
- Public officer who violates public records laws is guilty of a non-criminal infraction; fine up to \$500.
- Public officer who knowingly violates public records laws is subject to suspension or removal and commits a first degree misdemeanor, subject to one year in prison, fine of \$1000, or both.

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Questions?

“Government-In-The-Sunshine Manual”
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