



Florida Sunshine and Public Record Laws

Michael J. Weiss, Esq.
Office of General Counsel



Florida Sunshine Law



Scope of the Sunshine

It provides a right of access to governmental proceedings at both the state and local levels.

The law is equally applicable to elected and appointed boards.

It has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

Advisory boards created are subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them.



Three Basic Requirements

Meetings of public boards or commissions must be open to the public;

Reasonable notice of such meetings must be given; and

Minutes of the meetings must be taken, promptly recorded and open to public inspection.



Miscellaneous Sunshine Law Information

Board members may not use the telephone, Facebook, email or text messages to conduct a private discussion about board business.

While a board member is not prohibited from discussing board business with staff or a non-board member, these individuals cannot be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

The Sunshine Law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Penalties can be levied for volatilities, including misdemeanors and fines.



Public Records Law



What is a Public Record

“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.”

- **Anything that captures information**
- **Anywhere- cloud, safety deposit box at the bank, FTP site, office, warehouse, computer, etc.**

“...made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency...”

- **Has to do with DEP**

That is “intended to perpetuate, communicate, or formalize knowledge of some type.”

- **Communicate knowledge- share/exchange/pass-on/impart/convey/transmit**
- **Formalize knowledge- to give a certain or definite form; to shape**
- **Perpetuate knowledge- to cause the knowledge to last indefinitely**



What is Not a Public Record

Documents that are NOT intended to perpetuate, communicate, or formalize knowledge of some type.

- **Includes documents that are not intended as final evidence of the knowledge to be recorded.**
- **Personal notes such as handwritten notes that are “merely preliminary materials” intended to aid in the creation of a document that is later formalizing knowledge.**
- **Personal notes to yourself which are designed to your own personal use in remembering certain things.**
- **These only include those documents that serve no governmental function.**



Notes and Drafts

Be careful of your notes and drafts.

- “To be contrasted with ‘public records’ are materials prepared as drafts or notes, which constitute mere precursors of governmental ‘records’ and are not, in themselves, intended as final evidence of the knowledge to be recorded. Matters which obviously would not be public records are rough drafts, notes to be used in preparing some other documentary material, and tapes or notes taken by a secretary as dictation.” (Emphasis added.) Shevin, 379 So. 2d at 640.
- “The handwritten notes...are merely preliminary materials intended to aid the consultant when he later formalized the knowledge...” (Emphasis added.) Shevin, 37 So. 2d at 641.



Exemptions and Confidentiality

These records are “public records,” but exempt or confidential from disclosure.

Statutes have a number of General Exemptions and confidential provisions from inspection or copying of public records.

- **These appear in Chapter 119 and also other chapters within the statutes.**
- **Can be program or division specific.**

If not expressly provided by statute, there are no other exemptions or confidentiality provisions that can be created by specific facts or case law.

Just because it is an exchange between you and your attorney, there is no guarantee attorney-client privilege protects it.



Miscellaneous Public Records Information

Expect everything to be a public record.

Before you send anything, consider it could end up on the front page of the New York Times.

Best Practice: Don't mix work and pleasure when emailing and texting.

Just because it is an exchange between you and your attorney, there is no guarantee it is protected by attorney-client privilege.

If you get a question or request for a public record, see your office's public record liaison.

When in doubt or if you have questions:

- **Look it up in Chapter 119, Florida Statutes**
- **Look it up in the Government-In-Sunshine Manual (the current year's edition)**
- **Speak to your board attorney or ethics attorney**



Contact

Michael J. Weiss

Michael.Weiss@dep.state.fl.us

850-245-2245