

STATE OF FLORIDA  
**Public Service Commission**



### **WHAT IS THE SUNSHINE LAW?**

Florida's Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. The Sunshine Law generally applies to any gathering, whether formal or casual, of two (2) or more members of the same board or commission meeting to discuss some matter on which foreseeable action will be taken.

Article I, Section 24 of the Florida Constitution states: "All meetings of any collegial body of the executive branch of state government or of any... county, municipality, school district, or special district, at which official acts are to be taken or at which public business... is to be transacted or discussed, shall be open and noticed to the public..."

Chapter 286, Florida Statutes: "All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings."

### **WHEN DOES THE SUNSHINE LAW APPLY?**

The Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision." It applies equally to elected or appointed boards or commissions such as school boards and special districts and virtually all state and local collegial public bodies are covered by the open meetings requirements.

### **DOES THE SUNSHINE LAW APPLY TO PRIVATE ENTITIES?**

The Sunshine Law generally does not apply to private entities. However, there are some instances where a private entity may be subject to the open meetings law. A private entity created pursuant to law or by a public agency, such as certain nonprofit organizations, is subject to open meetings requirements. Also, when a private entity is "acting on behalf of" a public agency, the Sunshine Law may apply. Consider whether the private entity is merely providing services to a public agency versus rendering services in place of the agency.

## WHEN ARE MEETINGS NOT SUBJECT TO THE SUNSHINE LAW?

Generally, the Sunshine Law does not apply to social events, fact-finding meetings, or meetings where there is an applicable statutory exemption.

– *Social Events*: Members of a public board are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board are not discussed at such gatherings.

– *Fact-finding meetings*: Meetings for the purposes of merely gathering information where no recommendations are made, public business is not discussed or votes are not taken are not subject to the Sunshine Law.

– *Meetings where a specific statutory exemption applies*: The law provides a presumption of openness, which means that all meetings between two or more members of the same board or commission are presumed open to the public unless there is a specific statutory exemption. There are a limited number of exemptions which would allow for the closure of a meeting. Some examples include certain discussions with the board's attorney over pending litigation and portions of collective bargaining sessions.

In addition, specific portions of meetings of some agencies may be closed when those agencies are making probable cause determinations or considering confidential records. However, an agency cannot close a meeting simply to discuss records that are exempt from public disclosure – there must also be a specific statutory exemption allowing for the closure of the meeting. (See the First Amendment Foundation website for a searchable database of the 1,000+ exemptions at [www.floridafaf.org](http://www.floridafaf.org).)

## WHAT ARE THE PROCEDURAL REQUIREMENTS OF THE SUNSHINE LAW?

There are four (4) simple requirements:

1. Meetings of boards or commissions must be open to the public.
2. Reasonable notice of such meetings must be given.
3. Minutes of meetings must be taken.
4. Venue must be accessible.

A public agency cannot hold a meeting at any facility which discriminates based on age, race, etc., nor can a public agency unreasonably restrict public access. It must hold meetings in an accessible facility of sufficient size so as to accommodate the anticipated turnout.

## **WHAT IS REASONABLE NOTICE?**

"Reasonable" is not defined in the Florida Statutes, but the courts have said notice of public meetings must be "sufficient so as to inform" members of the public who may be interested in attending the meeting. This means that such notice must be reasonable under the circumstances. Also, the required notice must be reasonable in terms of content, timing, and placement.

## **WHAT IS THE GENERAL RULE RELATING TO PUBLIC PARTICIPATION?**

Generally, the public has an "inalienable right to be present and to be heard" at most public meetings. But a government agency can adopt reasonable rules which require orderly behavior and allow for the orderly progression of public meetings. This includes limiting the amount of time an individual can speak when a large number of people attend and wish to speak. The Sunshine Law requires that meetings of public boards or commissions be "open to the public at all times." This means public board members should not pass notes during a meeting in lieu of having an open discussion before the public, and all conversations between members must be audible.

## **WHAT IS A PUBLIC RECORD?**

The definition for public records is quite broad and includes all materials made or received by an agency in connection with official business used to perpetuate, communicate, or formalize knowledge. This means public records are not limited to traditional written documents, but that tapes, photographs, films, and sound recordings, for example, are also considered public records. There is both a statutory and a constitutional right of access to governmental records (Chapter 19, Florida Statutes, and Article I, Section 24, of the Florida Constitution).

## **WHAT CAN I DO IF MY PUBLIC RECORDS REQUEST IS DENIED?**

If your request for records is denied, the reason for denial should be in writing, including the exact statutory citation for the exemption authorizing the denial and a specific statement citing the reason(s) for concluding that the record is exempt or confidential.

A custodian of a public record who contends that the requested record or part of the record is exempt from inspection must state the basis for that exemption, including the statutory citation, and when asked, the custodian must put the denial of a public record request in writing. If a record contains both exempt and non-exempt information, the records custodian can only redact that portion of the record which is exempt and must provide access to the remainder.

## **WHAT HAPPENS IF THE REQUEST IS WRONGFULLY DENIED?**

If your request for access is denied, first call the First Amendment Foundation. Options for enforcement include: mediation through the Office of the Attorney General Open Government Mediation Program, file a complaint with your local state attorney, or file suit in civil court.

## **WHAT ARE THE 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.

## **ABOUT OPEN GOVERNMENT IN FLORIDA**

Pursuant to the Florida Constitution and Chapter 119 of the Florida Statutes and Article I, Section 24 of the Florida Constitution, a public agency must provide access to its records. The definition of a public records is very broad. Section 119.011(11), F.S., 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.*

Upon request, access to public records must be promptly provided. An agency may only deny access to records or portions of records if a specific statutory exemption applies making such records confidential and exempt from public disclosure and only those portions of the record in which an exemption applies should be redacted (deleted).

## **CAN AN AGENCY IMPOSE RESTRICTIONS ON REQUESTING PUBLIC RECORDS?**

NO. Without specific statutory authority, an agency cannot require that a request for public records be made in writing or in person, but you may wish to make your request in writing to ensure there is an accurate record of what was requested. Unless the requested information is confidential and exempt, a custodian of public records must honor a request for records, whether it is made in person, over the telephone, or in writing. In general, a requestor can not be required to disclose the reason for the request. As a general rule, 1) you don't have to show identification, 2) you don't have to make your request in writing, and 3) you don't have to give a reason for your request.

## THE FLORIDA PUBLIC SERVICE COMMISSION FOLLOWS THE FOLLOWING OFFICE OF OPEN GOVERNMENT'S MODEL GUIDELINES FOR PROVIDING PUBLIC RECORDS:

### 1. Purpose

The FPSC fully embraces the tenets set forth in the Public Records Law, Chapter 119, Florida Statutes, governing the public's right to access records held by the agency. In support of the broad public right to access public records, the FPSC incorporates the following guidelines to inform agency staff about implementation of the Public Records Law within the FPSC and provides uniformity within the Commission in charging for access to public records.

### 2. Authority

Article I, Section 24, Florida Constitution and Chapter 119, Florida Statutes.

### 3. Scope

This document outlines policies, responsibilities, and describes procedures for providing access to public records. It should be applied to all activities which involve public records requests. These guidelines complement, but do not replace, the requirements under the Public Records Law.

### 4. Definitions

Confidential or Sensitive Records - Records which are presently provided by law to be confidential or which are prohibited from being inspected by the public by either general or special law.

Extensive Use of Resources - When the nature or volume of the public records requested to be inspected, examined, or copied requires the use of FPSC information technology resources and/or labor time required of clerical or supervisory employees exceeds one hour, the particular use of such resources is considered extensive.

Provider - The individual within FPSC, usually the public records custodian or designee, who makes public records available to a requester for inspection, examination, or copying.

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

Requester - A person, firm, association, joint venture, partnership, estate, corporation, or any other group or combination who has made a public records request to inspect, examine, copy, or receive copies of documents in the custody or control of the FPSC, pursuant to chapter 119, Florida Statutes.

## 5. Policies

The following policies are adopted:

- a. Agency held records, except those specifically precluded from disclosure by statutory exemption, shall be available, in any form and format used by the agency, to all citizens for inspection or copying under the supervision of the records custodian or designee during normal business hours.
- b. The widest possible access to existing public records is encouraged by making copies of those records available for a fee not to exceed the actual cost of duplication, and, if the nature or volume of public records requested to be inspected, examined, or copied requires extensive use of agency resources, the minimal additional cost to cover such extensive use of agency resources.
- c. Innovative practices to enhance the public's right of access to public records shall be encouraged. Many records are available from the FPSC's Web site at [www.floridapsc.state.fl.us](http://www.floridapsc.state.fl.us).
- d. The FPSC shall assure that future information technology resources used to manage, store, or maintain public records adequately provide for the rights of the requester to access public records under Chapter 119, Florida Statutes.

## 6. Responsibilities

- a. Divisions, Districts, and Offices shall:
  1. identify the public records for which they are custodians. When these public records are shared such that a single custodian cannot clearly be identified, the custodian most responsible for maintaining access to these public records shall have custodial responsibility; and
  2. identify the types of public records and public record information under their custody which are exempt from inspection, examination, and copying under the Public Records Law.
- b. Managers and supervisors shall:
  1. be knowledgeable of the public access activities occurring within their responsible areas;
  2. develop methods of calculating the extensive costs incurred when their information technology resources, clerical or supervisory staff or both are extensively used to respond to public records requests, unless such methods are already established by this directive;

3. ensure actual cost of duplication and/or extensive use charges are applied to public records requests only when it is cost-effective to do so; and
  4. provide adequate staff training in the requirements of the Public Records Law and the policies set forth in these guidelines, with particular attention to staffs responsibility for maintaining the confidentiality of exempt information or records.
- c. A cost benefit analysis has been conducted to determine whether the benefit of collecting fees for providing access to public records outweighs the cost to the FPSC of processing such fees. The Office of Commission Clerk is responsible for collecting actual cost of duplication fees and/or extensive use charges from the requester only when such fees/charges have been supported.

## **7. Public Records Requests**

Providers should accept requests for public records in writing, by electronic mail, by telephone, by facsimile, or in person. If the request is insufficient to identify the records sought, the provider should help the requester clarify the request. The provider may ask the requester to complete forms to assist in defining or documenting the facts necessary for completing records requests; however, the requester is not obligated to complete these forms as a condition for obtaining the public records requested. Requests for records should be accepted and records made accessible for inspection or duplication during the FPSC's normal business hours. Many requests for documents are responded to directly during the normal course of FPSC business.

Although the Public Records Act does not require that requests be submitted in writing, doing so provides real practical benefits to the requester (as long as he or she doesn't mind that the request itself then becomes a public record). The benefits include eliminating uncertainty about what information is being sought.

For convenience of the requestor, e-mails may be sent the Office of Commission Clerk directly at [Clerk@psc.state.fl.us](mailto:Clerk@psc.state.fl.us) or from the Web site, [www.floridapsc.com](http://www.floridapsc.com), by selecting this e-mail link from **Dockets and Filing** and the **Frequently Asked Questions**. Should the requestor desire to do so, documents and public records requests may also be made in writing by selecting **Dockets and Filing** and the **Copies of Documents and Public Records Request** form. Selecting the **SUBMIT** key will send your request directly to the Office of Commission Clerk.

## 8. Public Records Exemptions

The FPSC is responsible for protecting information defined as confidential or as otherwise prohibited from public inspection or copying under the Public Records Law. All exemptions to the Public Records Law can be found in the Florida Statutes. The following standards and controls should be followed to prevent the inadvertent or unauthorized release of confidential and exempt information:

- a. Confidential information shall be redacted (extracted) from records prior to public release or examination of the nonexempt portions.
- b. Future data processing Systems which are expected to maintain or provide access to confidential or sensitive records shall be designed with redaction capabilities so that only nonexempt portions of records can be extracted and made available to a public records requester. Redaction capability shall be a component in the redesign of existing systems.
- c. Providers are responsible for informing the requester when requests cannot be filled due to an exemption which prevents disclosure. Upon request, the provider must provide the basis for this exemption and its statutory citation.

## 9. Availability of Public Records

The FPSC strives to make as many records, reports, and other documents filed with or produced by the FPSC available at no charge on the Web site. Frequently asked questions and answers are available to provide general information and assist with locating information on the FPSC Web site from [www.floridapsc.com](http://www.floridapsc.com), by selecting the **Dockets and Filing** and the **Frequently Asked Questions** tabs. Official filings in docketed matters are accessible from the "Dockets & Filings" selection.

The Public Records Law allows government agencies to collect the actual cost of material and supplies used to duplicate public records for requesters. Agencies may also collect a reasonable service charge, in addition to actual cost fees, when a request for public records requires the extensive use of information technology resources and/or clerical or supervisory assistance.

FPSC considers records requests taking more than one hour to locate, copy, or otherwise make available the requested material as a diversion of resources which is susceptible to extensive use service charges. Fee/charge standards and guidelines, posted on the Web site, are designed to ensure that the FPSC is consistent in its application of rules which allow the recovery of actual and extensive use costs. The Office of Commission Clerk acts as the FPSC's liaison for public records requests. Copies will be furnished upon payment as provided in Chapters 28 and 119 and Section 350.06(6), Florida Statutes.

## 10. Copying Charges and Fees

Copies of Documents	<u>§ 119.07(2)(a), F.S.</u> <u>§ 119.07(4)(a)1, F.S.</u> <u>§ 119.07(4)(a)2, F.S.</u> <u>§ 119.07(4)(c), F.S.</u> <u>§ 28.24(27), F.S.</u> <u>§ 350.06(6) F.S.</u>	Records provided electronically Single-sided pages Duplexed pages Certified copies Certified or registered mailing Where fee would be < \$ 1.00	No charge \$ .15 each \$ .20 each \$ 1.00 each Cost of mailing No charge
Media Charges	<u>§ 119.07(4)(a)3, F.S.</u> <u>§ 119.07(4)(a)3, F.S.</u> <u>§ 119.07(4)(a)3, F.S.</u> <u>§ 119.07(4)(a)3, F.S.</u> <u>§ 119.07(4)(a)3, F.S.</u> <u>§ 350.06(6) F.S.</u>	Thumb drive Video tape Audio tape DVD CD Where fee would be < \$ 1.00	\$ 10.00 each \$ 2.56 each \$ .46 each \$ .60 each \$ .19 each No charge
Records on Appeal	<u>§ 28.24(2), F.S.</u> <u>§ 28.24(17), F.S.</u> <u>§ 28.24(5)(a), F.S.</u>	Preparing appellate record Certification preparation Copy of the record	\$ 3.50 per instrument \$ 7.00 per certification \$ 1.00 per page
Special Service Charge	<u>§ 119.07(4)(a)3(d), F.S.</u> <sup>1</sup> <u>§ 119.07(4)(a)3(d), F.S.</u> <u>§ 119.07(4)(a)3(d), F.S.</u>	Information Technology Services Office of the General Counsel Other PSC staff	\$ 28.15 per hour \$ 18.29 per hour \$ 11.29 per hour
Florida State Agencies	<u>§ 28.24(12)(e)1, F.S.</u> <sup>2</sup> <u>§ 119.011(2), F.S.</u> <sup>3</sup>		No charge

<sup>1</sup> If the nature or volume of public records requested to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel, or both, in addition to the actual cost of duplication, a “special service charge,” will be added to the charge for copies based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service, that is actually incurred for the clerical and supervisory assistance, or both.

<sup>2</sup> All court records are the property of the State of Florida. The clerk of the court shall not charge for copies generated by CMS or held by the court.

<sup>3</sup> "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

## 11. Fees Collected and Waiver of Charges

### a. Fees Collected

1. When all allowable fees/charges applicable to a particular public records request can be calculated in advance, they should be collected prior to the provider investing significant information technology resources and/or clerical or supervisory assistance.
2. Where actual costs and extensive use fees cannot be immediately determined due to the nature of the request, the provider shall give an estimated cost for producing the records and inform the requester that the actual cost may vary, but will not exceed the original estimate by more than an additional 25%. Providers should ensure estimates are accurate within 25% of the actual cost. The requester accepts the cost estimate, and then the provider may fill the public records request. Once the records are ready, the provider shall notice the requester of the cost and furnish the public records upon receipt of payment.
3. Should the requester fail to pay the actual costs and/or extensive use charges incurred to produce the request, the provider shall refer the non-payment to the FPSC, Division of Administrative Services, Fiscal Services Section.
4. No sales tax is to be charged for a public records request.
5. All checks should be made payable to the Florida Public Service Commission.

### b. Waiver of Charges

Fees or charges may be waived between FPSC and other government agencies, by agreement between management, when the recurring exchanges or data sharing between agencies negates the need to apply these fees.

**Florida has a well-deserved reputation for providing public access to most governmental records. For more information, visit the Office of Open Government's Web site [http://www.flgov.com/og\\_public\\_records](http://www.flgov.com/og_public_records).**