

Florida's Sunshine Law



Bryant
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OUR NAME IS EASY TO REMEMBER. OUR WORK IS HARD TO FORGET.

www.bmolaw.com

Why are we here?

- **Section 112.3142, F.S. - Ethics training for specified constitutional officers and elected municipal officers.** - Beginning January 1, 2015, all elected municipal officers must complete 4 hours of ethics training each calendar year which addresses, at a minimum:
 - s. 8, Art. II of the State Constitution (“Ethics in Government”),
 - the Code of Ethics for Public Officers and Employees (Chapter 112, Florida Statutes),
 - and the public records and public meetings laws of this state (Florida’s Sunshine Law)

VERY IMPORTANT NOTE

Purpose of today is to cover statutory requirements

The Florida League of Cities offers a free legal consultation service to any attorney who represents a municipality or elected official through the attorney. Municipal attorneys may call the league office at 850-222-9684.

Florida's Sunshine Law

Public Meetings

FLORIDA CONSTITUTION - Article I, section 24

Access to public records and meetings.

- All meetings of any collegial public body or the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature, shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Florida's Sunshine Law

Public Meetings

Section 286.011(1) provides:

“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, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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.”

Florida's Sunshine Law

Public Meetings

- 286.011(2)

The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

Florida's Sunshine Law

Public Meetings

What constitutes a “meeting” for purposes of the public meeting requirements of the Sunshine Law?

- **Communications between two or more board members of the same board or council**
- **On any matter which may come before the board or council**

Florida's Sunshine Law

Public Meetings

What forms of communication are subject to the Sunshine Law?

- **All communications - in person, phone, letters, carrier pigeons, emails**
- **Includes new methods of electronic communications such as Twitter, Facebook, LinkedIn, instant messages, and text messages (including related metadata).**

Florida's Sunshine Law

Public Meetings

What about the exchange of information between members of a board of governing body through a liaison? Is that a meeting?

- Prohibited in general.
- May still have one-on-one meetings with staff, as long as no one serves as a conduit between board members.

Florida's Sunshine Law

Public Meetings

What entities must comply?

- Most public bodies
- Local government boards including advisory boards
- Generally does not apply to staff or internal staff meetings

Florida's Sunshine Law

Public Meetings

What are the basic requirements?

- Meetings must be open to the public
- Reasonable notice of the meetings must be given
- Minutes must be taken

Florida's Sunshine Law

Public Meetings

- What does it mean to be “open” to the public?
 - Time
 - Space
 - And...

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Public Meetings

- Location Location Location!



- Private clubs
- Restaurants
- Within the jurisdiction

Florida's Sunshine Law

Public Meetings

- What is “reasonable” notice?
 - Time: Varies upon facts and circumstances
 - 7/24/72 Presumption
 - Content: No prescribed form
 - Time
 - Place
 - Subject Matter
 - Method: Posting/Press Releases/Electronic Media

Florida's Sunshine Law

Public Meetings

- Our meetings are video recorded and broadcast on the internet/TV, does this count as “minutes” for the meeting?
 - No – governing bodies can choose to record its meetings but written minutes still must be prepared.
- Not a verbatim transcript: brief summary or series of brief written notes reflecting the actions taken at the meeting

Florida's Sunshine Law

Public Meetings

Exemptions – ALL STATUTORY

- Pending Litigation
- Labor negotiations-bargaining team
- Risk management committees
- Security system meeting
- Vendor negotiations

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Public Meetings

What can happen if the law is violated?

- Criminal penalties
- Removal from office
- Non-criminal penalties and fines
- Attorneys' fees
- Injunctive and declaratory relief
- Action taken may be void *ab initio* (legally nullified)

Florida's Sunshine Law

Public Meetings

Does the Sunshine Law prohibit me from attending a social function with colleagues on a public board?

Answer: No, as long as no discussion occurs on matters which may come before your board.

Florida's Sunshine Law

Public Meetings

Can a violation be cured?

Answer: Yes, as long as there is independent final action taken in the Sunshine, which is not merely a perfunctory ratification of secret meetings.

Florida's Sunshine Law Public Meetings Q&A



Florida's Sunshine Law Public Records



Florida's Sunshine Law

Public Records

- What makes a public record “public”

Florida Constitution, Declaration of Rights

Article I, Section 24

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.

Florida's Sunshine Law

Public Records

Section 119.01, Florida Statutes

General state policy on public records

- It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.
- Majority of records will be captured by agenda and minutes.
- Duty is also yours if you have custody of public records!

Florida's Sunshine Law

Public Records

- **Section 119.07(1)(a)**

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.

Florida's Sunshine Law

Public Records

What is a “public record”

- All records and documents made or received in connection with the official business of a governmental entity is subject to public inspection and copying.
- This includes records created by staff, commissioners/council members, committees, and advisory boards.

Florida's Sunshine Law Public Records

Created to:

- Communicate
- Formalize
- Perpetuate



Florida's Sunshine Law

Public Records

Are my notes public records?

- Notes and non-final drafts that formalize knowledge or communicate official business are public records
- Personal notes to help jog a memory are not public records
- Personal notes intended to communicate, perpetuate or formalize knowledge are public records

Florida's Sunshine Law

Public Records

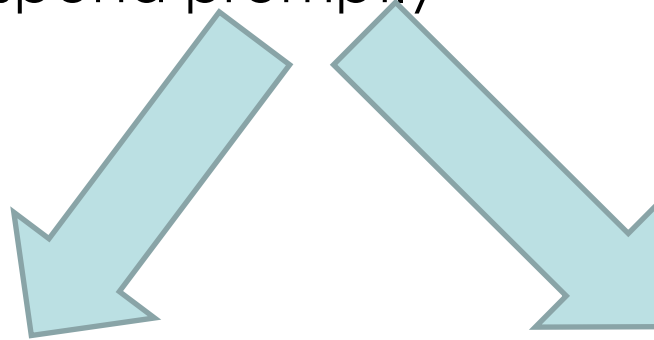
What about all of the work I do on my computer? Is that public too?

- Purely personal e-mails are not public records, but be warned there is no “expectation of privacy” for the communications you make on a government-owned computer
- City related e-mails, Facebook entries, Tweets and Instant Messages are public records
- Includes metadata

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Public Records

- Basic Requirements - **Section 119.07(c)**
 - Duty to acknowledge request
 - Duty to respond promptly



Allow Access

Deny Access

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Public Records

Denying Access:

Exemptions must be

- Statutory
- Narrowly applied
- Provided in writing to requestor
 - NEW CASE ON REDACTIONS:
Florida Dept. of Corrections v. Miami Herald, 41 Fla. L. Weekly D1993 (Fla. 1st DCA, August 29, 2016)
- Exempt v. confidential

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Public Records

What about the costs of responding to requests?

- **Fee for duplication authorized by statute**
- **Extensive use of IT resources, staff, or supervisory, may require a “special service charge”**
- **Special service charge must be reasonable and based on actual cost incurred**

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Public Records

What can happen if the Public Records Law is violated?

- **Knowing violations can mean jail time and a fine up to \$1,000**
- **Any violation can mean fines, civil actions, attorneys' fees and court costs**
- **May be removed from office**

Florida's Sunshine Law

Public Records

What do I do if I receive a public records request?

- **Duty to respond and include any records you have which may be responsive to the request**
- **Contact records custodian**
- **Consult entity's attorney**

Florida's Sunshine Law Q&A

