

OPEN GOVERNMENT OVERVIEW:

Sunshine Law and Public Records Law



Patricia R. Gleason
Special Counsel for Open Government
Attorney General Pam Bondi

SUNSHINE LAW

- Florida's Government in the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. In the absence of statutory exemption, it applies 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.

Scope of the Sunshine Law

- Board members may not engage in private discussions with each other about board business, either in person or by telephoning, emailing, texting or any other type of electronic communication (i.e. Facebook, blogs).

Scope of the Sunshine Law

- While an individual board member is not prohibited from discussing board business with staff or a nonboard member, these individuals may not 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.

SCOPE OF THE SUNSHINE LAW

There are three basic requirements:

- 1) Meetings of public boards or commissions must be open to the public
- 2) Reasonable notice of such meetings must be provided; and
- 3) Minutes of the meetings must be prepared promptly and open to public inspection.

SCOPE OF THE SUNSHINE LAW

- The Sunshine Law applies to advisory boards created pursuant to law or ordinance or otherwise established by public agencies or officials.

Scope of the Sunshine Law

- Staff meetings are not normally subject to the Sunshine Law.
- However, staff committees may be subject to the Sunshine Law if they are deemed to be part of the “decision making process” as opposed to traditional staff functions like factfinding or information gathering.

Scope of the Sunshine Law

- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote).
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

Board meetings

- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

Board meetings

- Section 286.0114, F.S., provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from “maintaining orderly conduct or proper decorum in a public meeting.”

Penalties

- **Civil action**
 - Action taken in violation of the Sunshine Law may be invalidated.
- **Criminal penalties**
- **Suspension or removal from office**

PUBLIC RECORDS LAW

- Florida's Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption.

The term “public records” means:

- a) 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” **(includes electronic communications like text messages, emails)**.
- b) Made or received pursuant to law or ordinance or in connection with the transaction of official business
- c) By any agency [including a private entity acting ‘on behalf of’ a public agency]
- d) Which are used to perpetuate, communicate, or formalize knowledge

PROVIDING PUBLIC RECORDS

- a) Public records cannot be withheld at the request of the sender
- b) A requestor is not required to show a “legitimate” or “noncommercial interest” as a condition of access
- c) A request cannot be denied because it is “overbroad”
- d) Unless authorized by another statute, an agency may not require that public records requests be in writing or require the requestor to identify himself or herself

PROVIDING PUBLIC RECORDS

- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days).
- The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.

PROVIDING PUBLIC RECORDS

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- An agency is not required to create a new record

PROVIDING PUBLIC RECORDS

- Chapter 119 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An additional 5 cents may be charged for two-sided copies. For other copies, the charge is the actual cost of duplication of the record. Actual cost of duplication means the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost.

Fees

- In addition to the actual cost of duplication, an agency may impose a reasonable service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.



Retention

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained.

Penalties for noncompliance

- a) Criminal penalties
- b) Civil action
- c) Attorney's fees

Review Questions

- **I. Two county commissioners are talking to each other at a football game. A reporter is with the commissioners and able to hear the entire conversation. The commissioners:**
 - **A. Have not violated the Sunshine Law because even if they were discussing commission business, the meeting was public because a newspaper reporter was present.**
 - **B. Have violated the Sunshine Law if they talked about matters that foreseeably could come before the commission for discussion or action.**
 - **C. Have violated the Sunshine Law if they were talking about commission matters that have been scheduled for a vote by the commission.**
 - **D. Both B and C are correct.**

Review questions

- The correct answer is D

Review Questions

- **2. A city commissioner meets privately with another member of the commission to discuss a contract which is under consideration by the commission. Which of the following is true?**
- **A. The State Attorney could charge the commission members with a violation of the Sunshine Law.**
- **B. The Attorney General could charge the authority members with a noncriminal infraction for violating the Sunshine Law.**
- **C. The Florida Ethics Commission could charge the authority members with violating the Sunshine Law.**
- **D. All of the above.**

Review questions

- The correct answer is A.

Review Questions

- **3. On May 1, 2016, an election was held to fill 3 seats on the local soil and water conservation district. John Smith has been a supervisor on the district board since 2005 and was reelected. Jane Doe and Mary Jones have never served on the board and both were elected. All three will be officially sworn in on June 1, 2016. Which of the following meetings is subject to the Sunshine Law?**
- **A. A meeting held on May 2 between Jane Doe and Mary Jones.**
- **B. A meeting held on April 30 between Jane Doe, Mary Jones, and John Smith.**
- **C. A meeting held on June 2 between Doe, Jones and Smith.**
- **D. A and C are correct.**

Review Questions

- 3. The correct answer is D.

Review Questions

- **4. A city clerk wants to send an email from his personal computer to a city councilmember about an item on the council agenda. Which statement is correct?**
- **A. The email is a public record**
- **B. The email is not a public record because personal emails are not subject to the public records law.**
- **C. The email is not a public record but the councilmember should not respond to the email because the response would violate the Sunshine Law.**
- **D. The email is a public record but the councilmember should not respond because the response would violate the Sunshine Law.**

Review Questions

- 4. The correct answer is A.

Review Questions

- **5. A state employee is given a written reprimand for a violation of agency rules. The employee files a grievance, and after a public hearing, the grievance committee rules that the employee should have been given a written warning instead of a reprimand. The committee enters an order declaring that the reprimand is invalid. A few weeks later, the agency receives a public records request for all records relating to the employment of the agency employee. Which of the following statements is correct?**

Review Questions

- **A. Because the reprimand was overturned, the agency should destroy it.**
- **B. The reprimand is a public record and must be provided in response to the public records request although the agency may attach a statement noting that the reprimand was overturned by a grievance committee.**
- **C. Because the reprimand was overturned, the reprimand should be placed in a sealed envelope and the agency should not produce it in response to the public records request.**
- **D. The reprimand is a public record because the grievance committee should not have held a public hearing on the grievance.**

Review Questions

- 5. The correct answer is B.

Review Questions

- **6. A city advisory committee is voting to elect officers. The Chair has proposed that the members use written ballots. She would prefer that members be able to simply identify the person they are voting for, and not themselves on their ballots if they choose. Which of the following statements is true?**

Review Questions

- **A. Because the committee is only an advisory committee, the members are not required to use ballots that include the name of the person voting and the person they voted for. The members can simply mark their choice on the ballot and remain anonymous if they choose.**
- **B. Because the vote is only to elect officers rather than to discuss or take action on committee issues, the members are not required to use ballots that include the name of the person voting and the person they voted for. They can simply mark their choice on the ballot and remain anonymous.**
- **C. If written ballots are used, the ballots must include the name of the person voting and the person they voted for.**
- **D. The committee is not allowed to use written ballots and can only cast votes via roll call.**

Review Questions

- 6. The correct answer is C.

Review Questions

- **7. A city clerk has received over 150 public records requests over the past year from John Jones. Each of the public records requests asks for records relating to Jones' ex-wife who is a city employee. Jones is very rude and obnoxious when he comes to city hall to make his requests. Which of the following options is available to the clerk?**
 - **A. Because Jones is so rude, the clerk would be authorized to ban him from city hall and instead require him to make his requests in writing or over the telephone.**
 - **B. Because Jones has asked for an extraordinary number of records, the city clerk would be authorized to ask him to specify the particular records that he wants.**
 - **C. Because Jones has made numerous public records requests which all relate to his ex-wife, he can be charged with stalking.**
 - **D. None of the above.**

Review Questions

- 7. The correct answer is D.

Additional Resources

Office of Attorney General Pam Bondi

website: <http://www.myfloridalegal.com>

Governor Rick Scott website:

<http://www.flgov.com>

First Amendment Foundation website:

<http://www.floridafaf.org>