GOVERNMENT IN-SUNSHINE-LAW

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Manasota League of Cities

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SUNSHINE

- **SUNSHINE IS SERIOUS BUSINESS**
- **IS IN THE FLORIDA CONSTITUTION**
- **IS IN STATE STATUTES**

Florida Constitution Statement of Law: Article I Sec. 24 (b) (2002)

All meetings of any collegial body of…[a] municipality…at which official acts are to be taken

OR

At which official business is to be transacted or discussed,

Shall be open and noticed to the public…

Florida Statutes
s. 286.011
Statement of Law:

All meetings of any Board or commission of any…municipal corporation… at which official acts are to be taken are declared to be public meetings open to the public at all times…

Florida Statutes
s.286.011
Statement of Law:

- The board or commission shall provide reasonable notice of all meetings.
- No Resolution, Rule, or Formal Action shall be considered binding except as taken or made at such meeting.

Florida Statutes
s.286.011
Statement of Law:

- Minutes…of a meeting…shall be promptly recorded…
- Such records shall be open to public inspection.
- Circuit courts…have jurisdiction to enforce.

Interpretations:

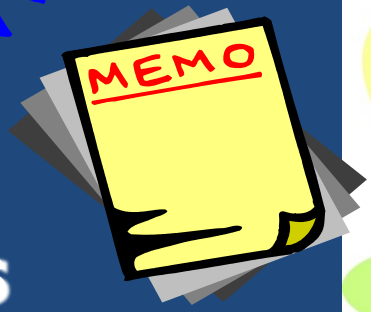
Members of the **SAME PUBLIC BODY** may **NOT** **COMMUNICATE** with each other concerning **MATTERS** which may **FORESEEABLY** come before the body, except in an **OPEN MEETING**

"Same Public Body"

- DELEGATION OF DUTIES
- **If power & authority is delegated to a committee or individual, that entity or person must act in sunshine also.**
  - Ad hoc advisory committees
  - Executive Director or staff
  - Search firm
  - Bid/Proposal Review Committee

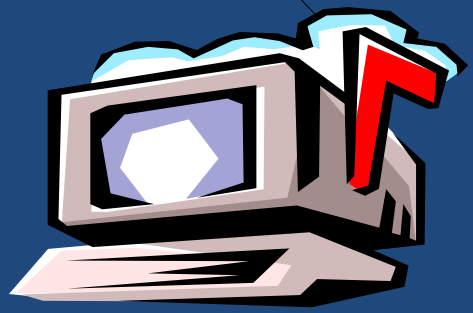
Communicate means:

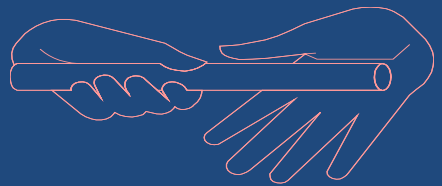
- Any "gathering" whether formal or informal between any two or more members



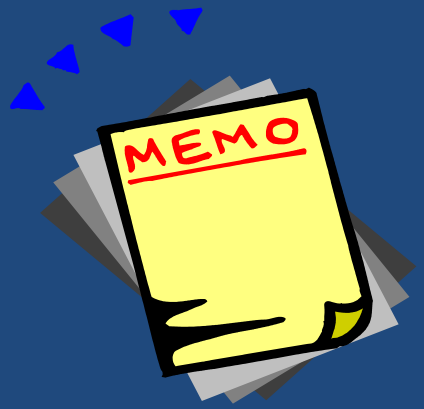
- Memoranda/Letters
- Telephone conversations
- Electronic media
- Intermediaries

You've Got Mail





"Communicate"



- **Rules for Use of Memoranda:**

  Member may:

  – **Send memo to other members outside of meeting.**

  Member may not:

  – **Request Response outside of meeting**

  – **Respond to a memo from another member outside of meeting.**

“Communicate”

- Telephone
- E Mail
- Social Media
  - Texting
  - Facebook
  - Linked In
  - Twitter & Many Others

"Communicate"

Most prevalent source of sunshine violations:

Face to Face Conversations

Second most prevalent:

E-Mail

"Communicate"

Intermediaries or Liaisons

- Daisy-Chaining
- Attorney-Senior staff
  - Never ask what another member said
  - Polling—Is violation
- Members of Public?
- News Reporters?
- News Letters?

SOCIAL MEDIA

- NEW
- AGO 2009-19
- Communications on government Facebook page may be subject to Government in Sunshine Law.
- Board members may not use government's Facebook page in discussion of matters that foreseeably will come before the Board.

"Communicate"

- Social Media and Sunshine Law
- See Attorney General: Update Florida Rules on Retention of Electronic Communication

- AG Website 3-17-10 myfloridalegal.com

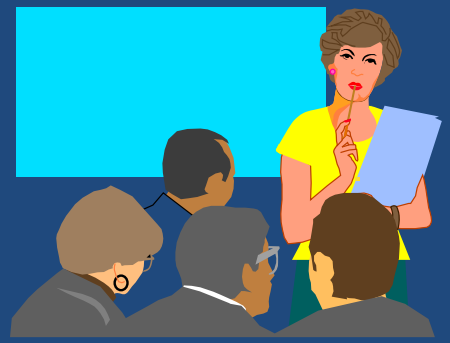
- AG Social Networking Video myflsunshine.com

"Matters before the public body":

- INCLUDES: Matters which may come before the body in foreseeable future
- Matters which may come back in foreseeable future

Agenda Items...

Exceptions:



- **FACT FINDING** committee or mission
- **EDUCATIONAL** or training session
- **REAL PROPERTY** negotiations*
- **LITIGATION** discussions
- **LABOR**
- **SECURITY**

FACT FINDING COMMITTEE

- ONLY APPLIES TO ADVISORY COMMITTEES, NOT TO ULTIMATE DECISION-MAKERS
- AGO 6-10-10 INFORMAL OPINION
- FINCH v. SEMINOLE COUNTY SCHOOL BOARD (5th DCA 2008)
- Held: Board members could not take fact-finding tour of district even if they sit in different bus seats and do not discuss business.

FACT FINDING

Committee

- ONLY APPLIES TO ADVISORY COMMITTEES, NOT TO ULTIMATE DECISION-MAKERS
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FACT FINDING

- FACT-FINDING ONLY--INFORMATION GATHERING AND REPORTING ONLY

- IF COMMITTEE CAN ALSO MAKE RECOMMENDATIONS, IT IS SUBJECT TO SUNSHINE LAW

EDUCATIONAL or TRAINING SESSIONS

- MUST STILL TAKE CARE TO AVOID DISCUSSION OF ANY MATTER THAT MAY COME BEFORE THE BODY IN THE FORESEEABLE FUTURE

REAL PROPERTY NEGOTIATIONS *

- OPTIONAL PROCEDURE FOR PURCHASE OF REAL PROPERTY AND HAVING OPTION EXEMPT FROM PUBLIC RECORDS LAW
- DOES NOT PROVIDE EXEMPTION TO SUNSHINE LAW
- SEE 166.045

LITIGATION DISCUSSIONS

- 286.011 (8) F.S.
- STRICT LIMITS
- PENDING LITIGATION
- ENTITY A PARTY
- SETTLEMENT NEGOTIATIONS OR STRATEGY RELATED TO LITIGATION EXPENDITURES
- ONLY ENTITY ATTORNEY & MANAGER MAY ATTEND WITH PUBLIC BODY

LITIGATION DISCUSSIONS

- RISK MANAGEMENT PROGRAM
- 768.28 F.S.
- CLAIMS & COMPROMISES EXEMPT FROM SUNSHINE AND PUBLIC RECORDS UNTIL END OF LITIGATION

- MAY BE OTHER EXCEPTIONS SUCH AS HIPAA

LABOR NEGOTIATIONS

- COLLECTIVE BARGAINING BETWEEN CITY MANAGER AND UNION ARE IN SUNSHINE
- DISCUSSIONS BETWEEN CITY MANAGER AND COMMISSION OR COUNCIL ARE EXEMPT
- See 447.605 F.S.

SECURITY

- DISCUSSIONS AND RECORDS CONCERNING SECURITY SYSTEMS AND PUBLIC PROPERTY ARE EXEMPT FROM SUNSHINE
- RECORDS ARE CONFIDENTIAL
- INCLUDES FEDERAL HOMELAND SECURITY

Special Problem Areas—Speaking Engagements & Forums

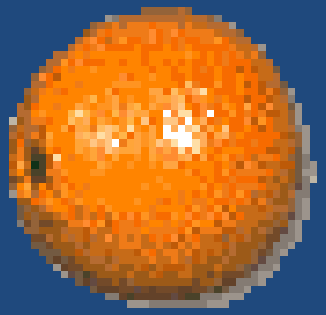
- TWO OR MORE BOARD MEMBERS MAY BE IN ATTENDANCE
- ONE OR MORE MAY BE A SPEAKER
- MORE THAN ONE MAY GIVE OPINION
- BUT CANNOT ENGAGE IN

DISCOURSE BETWEEN EACH

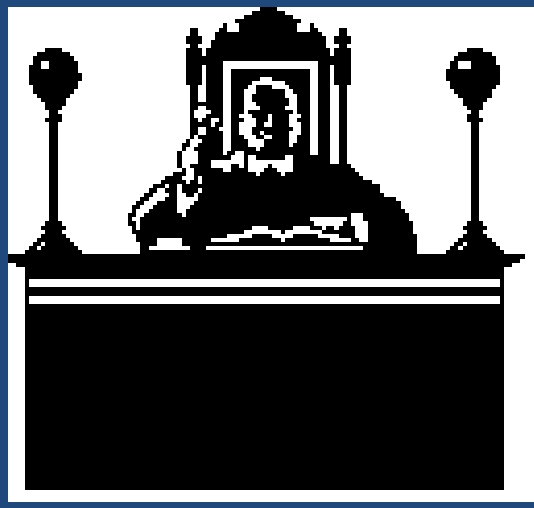
OTHER

Court Interpretations:

- Statute construed to "FRUSTRATE ALL EVASIVE DEVICES"
- Statute construed "LIBERALLY IN FAVOR OF THE PUBLIC"
- EACH STEP in decision-making process is an OFFICIAL ACT



Violations:



- Action taken is VOID
- Attorney's fees recoverable
- Unknowing violation--non-criminal infraction--$500 FINE
- Knowing violation--$500 FINE AND/OR 60 DAYS IN JAIL
- REMOVAL FROM OFFICE by Governor--extraordinary malfeasance

Alleged Violations

- Practical Consequences
- Negative Publicity
- Heightened Distrust
- Presumption of Violation in minds of constituents.

Recent Cases

- **SARASOTA CITIZENS FOR RESPONSIBLE GOVERNMENT v. CITY OF SARASOTA**
- **48 So. 3d 755 (Fla. 2010)**

Recent Cases (cont.)

Facts

- Bond Validation-Baltimore Orioles contract
- At least one e-mail correspondence, a comment was directly addressed from one Board member to another
- Sunshine lawsuit
- Public hearing for the reconsideration and ratification of the Interlocal Agreement

Recent Case (cont.)

- Asst. Manager consultations were not required to be in the sunshine
- (b) the one-on-one staff briefings of County Board members prior to the July 22, 2009 public meeting were not a violation of the Sunshine Law, and
- (c) any e-mail violations were cured by the Board's public meetings.

Recent Cases (cont.)

- Delegation

- Where the committee has been delegated decision-making authority, the committee's meetings must be open to public

- Advisory committees functioning as fact-finders or information gatherers are not subject to section 286.011.

Recent Cases (cont.)

Polling

Bullock, individually and assisted by other County staff, held one-on-one meetings in the two- or three-day period immediately preceding the Board's public meeting on July 22, 2009. These meetings were informational briefings regarding the contents of the MOU, where Bullock would also ask if the individual members had any questions about the MOU. There is no evidence that Bullock or other County staff communicated what any commissioner said to any other commissioner.

Recent Cases (cont.)

- E-mails

- From constituents to members of the Board were copied to other members and sometimes led to comments between Board members regarding the topic of bringing the Orioles to Sarasota for spring training. The last such e-mail exchange, which possibly violated the Sunshine Law, occurred on April 12, 2009.

Recent Cases (cont.)

Cure

- The Board conducted multiple public meetings subsequent to that April 12 exchange where the topic of Orioles spring training was discussed and considered. For example, on April 14, 2009, the Board publicly held meeting…
- On May 13, 2009, the Board publicly discussed stadium costs and financing and directed the County Administrator to proceed with negotiations.

Other hearings held.

Recent Enforcement

Governor Scott vs. Wauchula 2-5-11
EOG#11-28

Governor removed Commissioners from office for sunshine violations allegedly occurring months earlier even after criminal prosecution over and penalties (fines) paid and Commissioners re-elected to new term.

STATE ATTORNEY ENFORCEMENT

- UNLIKE OTHER ETHICS VIOLATIONS, SUNSHINE VIOLATIONS ARE NORMALLY INVESTIGATED BY LAW ENFORCEMENT &
- PROSECUTED BY STATE ATTORNEYS

- IF ONE THINKS ETHICS COMMISSION OR GOVERNOR IS SCARY, THINK ABOUT CRIMINAL PROSECUTION

RECENT ATTORNEY GENERAL OPINIONS

- AGO-2009-56
- USE OF INTERNET FOR DISCUSSIONS
- OK IF INFORMAL & OPEN TO ALL
- MUST BE AT A MEETING IF BETWEEN MEMBERS
- MUST BE QUORUM IN ROOM IN ORDER TO ALLOW ABSENT MEMBER TO PARTICIPATE BY PHONE

“Private” Non-Profits

- A private non-profit organization could be considered as a “public agency” for sunshine purposes and for public records purposes.

- News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser , 596 So.2d 1029 (Fla.,1992)

- Totality of Factors Test

Totality of Factors Test

- 1) level of public funding
- 2) commingling of funds
- 3) whether activity was conducted on publicly-owned property

- 4) whether services contracted for were integral part of authority's chosen decision-making process

Totality of Factors Test

- 5) whether corporation was performing governmental function or function which authority otherwise would perform
- 6) extent of authority's involvement with, regulation of, or control over corporation
- 7) whether corporation was created by authority8) whether authority had substantial financial interest in corporation, and 9) for whose benefit corporation functioned

Totality of Factors Test

- 8) whether authority had substantial financial interest in corporation, and
- 9) for whose benefit corporation functioned

West Volusia I
Dominion & Control Test

- MEMORIAL HOSPITAL-WEST VOLUSIA, INC. v.
- NEWS-JOURNAL CORPORATION: 729 So. 2d 373 (Fla. 1999).

- For Sunshine purposes, must determine whether government had dominion & control over private non-profit

Delegation Test

- Is in West Volusia I & II.
- MEMORIAL HOSPITAL-WEST VOLUSIA, INC. v.
- NEWS-JOURNAL CORPORATION 927 So. 2d 961(5th DCA 2006)

- Delegation Test: Delegation of performance of public purpose to a non-profit could be similar to delegation of official acts.

RECENT ATTORNEY GENERAL OPINIONS (AGOs)

- Number: AGO 2011-01
  Date: February 7, 2011
  Subject: Sunshine/Public Records Law, nonprofit foundation

  1. The Biscayne Park Foundation, Inc., is an "agency" for purposes of Chapter 119, Florida Statutes, and subject to the inspection and copying requirements thereof.

  2. The Biscayne Park Foundation, Inc., is subject to and must comply with the requirements of section 286.011, Florida Statutes.

s. 286.0114 (New 10-1-13)

- Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission

- The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition…

286.0114

…if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

286.0114

- Does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

- The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

286.0114

- Does not apply to:
- (a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act

286.0114

- (b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

- (c) A meeting that is exempt from s. 286.011; or

286.0114

- (d) A meeting during which the board or commission is acting in a quasi-judicial capacity.
- This paragraph does not affect the right of a person to be heard as otherwise provided by law.

286.0114 Safe Harbor

- (4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

- (a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

Safe Harbor

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

Safe Harbor

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

Safe Harbor

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

286.0114

- Remedies & Penalties
- Injunction I Circuit Court
- Attorney’s Fees
- Action Voided

s. 286.0115
Access to Local Officials

- 1995
- After Jennings v. Dade County
- Jennings said ex parte (one-sided) communications (not in the public meeting) with a public official are presumed to be prejudicial
- Many land use hearings are “quasi-judicial, i.e., “like a judicial” proceeding

s. 286.0115

- Elements of Quasi-judicial hearing

- 1. Procedural Due Process Required=Notice and Opportunity to be heard
- 2. Law must be correctly applied
- 3. Decision must be supported by substantial, competent evidence IN THE RECORD at the hearing

s. 286.0115

- 4. The tribunal must be FAIR & IMPARTIAL (i.e., free of prejudice)

- Thus, lobbying of a quasi-”judge” is presumed prejudicial
- However, it has been customary for local officials to allow constituents to have full access to them or to “lobby” them

s. 286.0115

- Access to Local Officials Act is a compromise
- (1) Safe Harbor Provision
- A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications…

s. 286.0115

…with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

s. 286.0115

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member…

s.286.0115

If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials

s. 286.0115

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

S. 286.0115

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

s. 286.0115

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

s. 286.0115

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.

s. 286.0115

(2)(a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

s. 286.0115

- The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

s. 286.0115

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decisionmaking body who is not a party or party-intervenor shall be allowed to testify before the decisionmaking body, subject to control by the decisionmaking body, and may be requested to respond to questions from the decisionmaking body…

s. 286.0115

- … … but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness.

- The decisionmaking body shall assign weight and credibility to such testimony as it deems appropriate.

s. 286.0115

A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

s.286.0115

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decisionmaking body by application of ex parte communication prohibitions.

s. 286.0115

…Disclosure of such communications by a member of the decisionmaking body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decisionmaking body.

s. 286.0115

All decisions of the decisionmaking body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

s.286.0115

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

Current & Future Trends

- "I think that is going to be the challenge for the next 50 years—how do we adapt old, establish rules to new technology"—John Roberts, Chief Justice of the United States, address to Rice University in 2012.

Current & Future Trends

- McLuhan-The medium is the Message-1964
- Proof:
  - Twitter-2013
- Expect for Sunshine:
  - More attempts at evasive devices
  - Easier detection of evasive devices
  - No change in Florida Law
  - More prosecutions of Sunshine violations

PUBLIC RECORDS Confidential/Exempt: What's the Difference?

MANASOTA LEAGUE OF CITIES

10-16 & 17, 2013

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CITY OF NAPLES

- PUBLIC RECORDS:
- EXEMPT/CONFIDENTIAL
- WHAT’S THE DIFFERENCE?
- PRACTICE TIPS-HOW TO HANDLE

PURPOSE

Provide guidance recognizing and dealing with production or non-production of records that may be in the custody of the public agency.

1. Is it a “public record”?

2. If it is a public record, is it:

Confidential or Exempt from production?

3. What (if anything) is the difference between an “exempt” public record and a “confidential and exempt” public record?

4. How does the clerk or custodian handle such records?

- Over 700 exemptions to public records production requirements

- In state and federal laws

- Sprinkled throughout wide-ranging laws

Examples:

- Medical (esp. HIPAA)
- Security (Homeland/Domestic)
- Business(copyright, trade secrets)

Examples

- Investigative
  - Active Criminal
  - Active Internal
  - Intelligence
- Confidential Informants

Examples

- Privacy
- Social Security, Addresses
- Victims of Crime
- Victims of Sexual Crimes
- Minors
- Students
- Police, Fire, Code Enforcement, Judges, etc.

Florida Constitution

- 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.

Court Interpretation

- Shevin v. Byron, Harless, Schaffer, Reid and & Associates, Inc., 379 So.2d 633 (Fla., 1980)
- A "public record" is any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.

1. Is it a Public Record?

Nature of the record, not the location of the record, that matters.

Public Record?

- State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003)

- Personal e-mails are not “made or received” pursuant to law or ordinance or in connection with the transaction of official business” and, therefore, do not fall within the definition of “public records” that are subject to disclosure by virtue of their placement on a government-owned computer system.

Public Record?

- National Collegiate Athletic Ass'n v. Associated Press, 18 So. 3d 1201 (1st DCA 2009).
- Documents placed by NCAA on a secure Internet website used by member institutions in resolving NCAA disputes, with those documents consisting of a transcript of NCAA disciplinary proceeding involving state university…

Public Record?

...and the response of the NCAA infractions committee to the university's NCAA appeal.

- Held: These are Florida Public records regardless of where located.

Public Record?

Notes & Drafts

- Depends upon:
  - Nature:
  - Just to refresh memory or to record information

  - Circulated or uncirculated:
  - To or from anyone inside or outside of the agency

2. Confidential or Exempt

- If Confidential or Exempt, record or portion of the record does not have to be produced.
- The custodian **must** identify in writing the reason for declining to produce AND the citation to the statute (or case law) that provides the exemption.

3. WHAT'S THE DIFFERENCE

- Exempt records MAY be withheld
- Confidential records MUST be withheld.

3. What's the Difference?

- "Exemption" is a defined term in Section 119.011(8) Fla. Stats.:

- "Exemption" means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution.

What's the Difference?

- The term "confidential" is not defined in the chapter. Both are mentioned in Article I, S. 24 of the Florida Constitution:
- Every person has the right to inspect or copy any public record…except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

What’s the Difference?

There is a difference between records the Legislature has determined to be exempt from The Florida Public Records Act and those which the Legislature has determined to be exempt from The Florida Public Records Act and confidential. If information is made confidential in the statutes, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute.

What's the Difference?

- If Exempt records are produced, there is no penalty.

- If Confidential records are produced, there may be civil damages, civil fines and even criminal penalties for wrongful production by custodian.

What's the Difference?

- Not always easy to discern.
- Statutes not always clear.
- Case law often close.
- Some confidentiality/exemptions are temporary
  - Active Investigations

What's the Difference?

- Some are forever or long term
  - Social Security Numbers
  - Confidential Informants
  - Trade Secrets/Copyright
  - Privacy/HIPAA
  - Homeland/Domestic Security

What's the Difference?

- Some depend upon what agency is holding the record
  - Driver License Numbers
- Some are based upon state law and some based upon federal law. Many are based upon both. Sometimes even inconsistent.
  - Medical records
  - Homeland/Domestic Security
  - Privacy

What's the Difference?

- Some confidentiality provisions provide relatively "minor" sanctions while others provide serious and draconian sanctions.
- Consequences can be tragic
  - Rachel Morningstar Hoffman Murder.

What's the Difference?

- Some statutes require redaction of a confidential portion of the record and production of the rest
- Some statutes require withholding of entire record
  - Student information
  - Some Medical/HIPAA

What's the Difference?

- 2) Any person who willfully and knowingly violates:
- (a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (b) Section 119.105 [Protection of victims of crimes or accidents] commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Penalties

- Improperly Withholding
  - Any **public officer** who:
  - (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding **$500**.
  - (b) **Knowingly** violates the provisions of s. 119.07(1) is subject to **suspension and removal or impeachment** and, in addition, commits a **misdemeanor of the first degree**, punishable as provided in s. 775.082 or s. 775.083.

Penalties

- (2) Any **person** who **willfully and knowingly** violates:
- (a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (b) Section 119.105 [Protection of victims of crimes or accidents] commits a **felony of the third degree**, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Penalties

- Any person denied a public record may sue in circuit court, get an immediate hearing, have the Court review the records.

- If Court finds that the records were improperly withheld, it must award damages, costs and attorneys fees against the agency.

4. HOW TO HANDLE

- PREVENTION IS BETTER THAN CURE

- HOW TO GET AHEAD OF THE CURVE:
  - IDENTIFY RECORDS THAT ARE COMPLETELY PRODUCIBLE
  - GET THOSE RECORDS EASILY AVAILABLE
  - PREFERABLY ON-LINE
  - CERTAINLY ON COMPUTERIZED SEARCH ENGINES

4. How to Handle

- HOW TO GET AHEAD OF THE CURVE
  - REVIEW AGENCY DOCUMENTS
  - EXISTING: PRE-VIEW AND REDACT WHERE NECESSARY
  - NEW: ENSURE THAT
    - FORMS ARE NECESSARY
    - INFORMATION IN FORMS IS ESSENTIAL
    - CONFIDENTIAL INFORMATION IS KEPT OFF OF FORM WHERE POSSIBLE.

HOW TO HANDLE

- COORDINATE
- Coordinate document creation, handling and production with other departments.
- Goal is to EXPEDITE, not control, or bureaucratize, public records production.
- Remember, the requirement for most records is to get up, go get the record and allow inspection and/or copy, on the spot. Period.

HOW TO HANDLE

- TRAIN
  - No matter how much training clerks receive, or give, DO NOT ASSUME other custodians or employees understand, even the basics.
  - Do not assume that the Courts will recognize that a Clerk is the sole Custodian of the Agency's records even if City policy says so, especially if that slows down production.

HOW TO HANDLE

- GET ASSISTANCE FROM CLERK &/OR FROM LEGAL WHERE UNSURE

- STAKES ARE TOO HIGH TO GUESS IN SOME CASES.

HOW TO HANDLE

- CUSTODIANS (INCLUDING ELECTED & APPOINTED OFFICIALS:
- KEEP PUBLIC RECORDS ON PUBLIC COMPUTERS, NOT PERSONAL COMPUTERS
- BEWARE OF SOCIAL MEDIA-ENSURE THAT RECORDS CAN BE RETRIEVED
- ASSUME THAT PUBLIC & PRIVATE MATERIAL WILL BE MINED AT SOME POINT

HOW TO HANDLE

- CUSTODIANS:
- DON’T PUT PUBLIC BUSINESS INTO RECORDS
- E-MAILS AND SOCIAL MEDIA
- IF RECORDS REQUESTED, GET INFORMATION TO REQUESTOR QUICKLY
- NEVER, NEVER DELETE PUBLIC RECORDS
- IF A QUESTION, GET HELP
- RESIST URGE TO BE COMBATIVE

TRENDS

- TECHNOLOGY MAKES IT PRETTY EASY TO CREATE, AND TO OBTAIN PUBLIC (OR PRIVATE) RECORDS
- COMPANIES EXIST WHO MINE RECORDS FORENSICALLY
- TESTERS ARE MAKING A LIVING FROM INCOMPETENCE OR INTRANSIGENCE BY PUBLIC OFFICIALS AND EMPLOYEES

HOW TO HANDLE

ABOVE ALL ELSE:

WATCH WHAT YOU “SAY”

WHEN YOU ARE A FISH IN A GLASS BARREL, SWIM CAREFULLY

HOW TO HANDLE

- SOME LEGISLATION IS NEED & WARRANTED
- ESPECIALLY, TO UPDATE THE LANGUAGE TO THE COMPUTER AGE.
- HOWEVER, IT WILL NOT BE EASY, IF IT SMACKS OF REDUCTION IN TRANSPARENCY
- ALSO, THE FLORIDA CONSTITUTION IS NOT LIKELY TO UNDERGO AMENDMENT TO RESTRICT TRANSPARENCY

SUGGESTIONS

- CURRENTLY, COMPUTER PROGRAMS ARE CRUDE, FOR HANDLING MANY REQUESTS
- USE KEY WORDS
- OFTEN OVER-INCLUSIVE
- THEN GOVERNMENT TRIES TO CHARGE FOR MORE THAN NEEDED
- NEED BETTER PROGRAMS
- ALSO, NEED TO WORK HARD WITH REQUESTOR TO NARROW SCOPE

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Public Records: Exempt/Confidential – What Are They & What's the Difference?

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Disclaimer: All opinions expressed in this paper and the accompanying presentations are solely those of the author and not of the Law Firm or any Client.

A. INTRODUCTION[1]

Local government elected and appointed officials, employees, and clerks are somewhat familiar with the receipt of, the maintenance of, and the need to provide access to, public records.

Generally speaking, if a document dealing with any aspect of government business, (perhaps other than junk mail), "hits" the mail room, desk or computer, it will be kept and stored as a "public record". However, with the crush of data, coming in and going out of the agency in many formats, (mostly electronic), and the propensity for people to "speak" to each other through e-mail and social media rather than in person or by telephone, management of records and timely production of data is a daunting task.

The patchwork of Florida statutory regulations is about as modern as an old typewriter or mimeograph machine. Although feeble attempts have been made by the Florida Legislature and more than one governor to update the laws, most of the substance of the production of public records is out of the disco era. It is a risky political foray for a state legislator to attempt to make even clearly needed reforms. The media are extremely wary of any change, and even have a pre-coordinated "Sunshine Week" during the 60-day legislation devoted to warning legislators of the consequences of infringing upon the public's "right-to-know".

So, we still have, for example, the use of the term "cost of duplication" of records in Sec. 119.011 and 119.07 Fla. Stats., traceable to the early 1980s when printing and copying were king.[2] It is little wonder that there are unprecedented challenges for local government officials, custodians and clerks to provide greater governmental transparency and still stay within the requirements of these anachronistic regulations.

B. PURPOSE

The purpose of this presentation is to provide guidance for both custodians and clerks of local government entities in recognizing what is a public record, and then in dealing with production or non-production of records that may be in the custody of the public agency or of a custodian. For purposes of this presentation, it will be assumed for the most part that the agency is a "public agency" as defined in the public records law[3] although with regard to some public-private partnerships or non-profits, it is not that easy to discern.

Specifically, the analysis will deal with decisions confronting the custodian or clerk when dealing with a public records request that may implicate a confidential and/or exempt record, including:

1. **Is it a "public record"?**
2. **If it is a public record, is it confidential or exempt from production?**

3. **What (if anything) is the difference between an exempt public record and a "confidential and exempt" public record?**
4. **How does the clerk or custodian handle such records?**
5. **Special Cases & Trends**

With over 700 exemptions to public records production requirements in state and federal law, sprinkled throughout wide-ranging laws (medical, security, copyright, trade secrets, for example) rather than being neatly tucked into Chapter 119 (Public Records) of Florida Statutes, the task might seem impossible. Fortunately there is a very good summary of most in the Government-in-the-Sunshine Manual (the Manual), which is updated annually.[4] No clerk's office or local government attorney's office should be without access to the Manual. Caution is advised however, as it is a secondary source of information (the primary source being the Constitutional provisions, statutes, regulations and court decisions themselves), but it has valuable references to the primary sources.

C. ANALYSIS

1. Is it a Public Record?

The Florida Constitution itself governs public records and exemptions.[5] It gives persons the right to inspect and copy any public record made or received in connection with the official business of any public body, officer or employee and allows the Legislature to provide for exemptions. Not surprisingly, the courts have interpreted this provision and the legislation adopted pursuant to it, on many occasions, such as this quote in a 2009 case:

> The Florida Supreme Court provided additional guidance to the lower courts in Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc., 379 So. 2d 633 (Fla. 1980). In that case, the court defined the term "record" as used in section 119.011(12) as "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." Shevin, 379 So.2d at 640. This definition was intended "to give content to the public records law" by attributing a meaning to the term "record" that is "consistent with common understanding of the term." Shevin at 640.[6]

That definition in Sec. 119.011 now reads as follows:

> (12) "Public records" means 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.

It is the nature of the record, not the physical location of the record, that matters. So it is possible that public records may be located outside of the agency offices (such as on private computers). Conversely, not all records located within an agency office (such as employee private e- mails on agency computers)[7] are public records.

2. Is the Public Record Confidential and/or Exempt from Production?

Having determined that a requested record is a public record, the next step is to determine whether it falls within one of those 700+ exemptions to the public records production requirement. (For purposes of this section, exempt and confidential will be treated similarly.) This entails identifying whether an exemption is actually set out in a law. If not, it is not exempt. It also entails determining whether any portion of a record is exempt, because unless the entire record is exempt, the exempt portion must be redacted (obliterated) and the non-exempt portion produced.

To further complicate matters, some records are only exempt for a certain period of time. For example, active criminal investigative records are only exempt (and confidential) during the pendency of an active investigation. Some criminal intelligence records may remain confidential and exempt beyond a particular investigation, such as identity of confidential informants (CIs). Leaks and improper handling of such confidential information can have serious consequences.[8] As with the recent "WikiLeaks" scandal on the federal level, there are those inside and outside of government that may take it upon themselves to mishandle governmental files without regard to legalities.

The Legislature has set out many of the exempt and confidential records in the Public Records Exemption sections of Chapter 119. Section 119.071[9] provides categories and exemptions and Section 119.0713[10] provides others as relating to local government. Caution is advised because there are exceptions to the exemptions listed outside of the statutes and located in the General Index to the Florida Statutes under the heading "Public Records." B. The general categories are summarized here, but see the actual statute in Endnotes for exact language):

(1) **AGENCY ADMINISTRATION**.—

(a) Examination questions and answer sheets.

(b) Sealed bids, proposals, or replies.

(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal.

(d) 1. A record that was prepared by an agency attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal

theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative.

(e) Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station.

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret.

(2) **AGENCY INVESTIGATIONS**.—

(a) Criminal intelligence and criminal investigative information prior to January 25, 1979.

(b) Criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency (reciprocity).

(c) 1. Active criminal intelligence information and active criminal investigative information.

2. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record.

(d) Surveillance techniques or procedures or personnel. Comprehensive inventory of state and local law enforcement resources compiled pursuant to [emergency plan] and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency.

(e) Substance of a confession of a person.

(f) The identity of a confidential informant or a confidential.

(g) 1. a. Complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activity until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

2. Alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential.

(h) 1. The following criminal intelligence information or criminal investigative information

a. Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by chapter 827.

b. Any information which may reveal the identity of a person who is a victim of any sexual offense.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime.

(j)1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime.

Any information (1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence upon written request by the victim, which must include official verification that an applicable crime has occurred.

2.a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual conduct which reveals that minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense.

(3) **SECURITY**

(a)1. As used in this paragraph, the term "security system plan" includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt.

(b) 1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act.

(c) 1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which records are held by an agency are exempt.

As used in this paragraph, the term:

a. “Attractions and recreation facility” means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

(I) For single-performance facilities:

(A) Provides single-performance facilities; or

(B) Provides more than 10,000 permanent seats for spectators.

(II) For serial-performance facilities:

(A) Provides parking spaces for more than 1,000 motor vehicles; or

(B) Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

(I) Provides onsite parking for more than 250 motor vehicles;

(II) Encompasses 500,000 square feet or more of gross floor area; or

(III) Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

d. "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

(I) Encompasses more than 400,000 square feet of gross floor area; or

(II) Provides parking spaces for more than 2,500 motor vehicles.

e. "Office development" means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.

f. “Hotel or motel development” means any hotel or motel development that accommodates 350 or more units.

(4) **AGENCY PERSONNEL INFORMATION**.—

--Social security numbers of all current and former agency employees which numbers are held by the employing agency are confidential and exempt.

--Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt.

--Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt.

--Undercover personnel of any criminal justice agency is exempt.

--For purposes of this paragraph, the term “telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

--The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

--The home addresses, telephone numbers, dates of birth, and photographs of firefighters; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters.

--The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the

names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt.

--The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt.

--The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

--The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt.

--The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names

and locations of schools and day care facilities attended by the children of such personnel are exempt.

--The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

--The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt.

--The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt.

--The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public.

--The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of

such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public.

--An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

(5) **OTHER PERSONAL INFORMATION**.—

--Social security numbers.

--Information that would identify or locate a child who participates in a government-sponsored recreation program is exempt.

--Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program is exempt.

--All records supplied by a telecommunications company, which contain the name, address, and telephone number of subscribers are confidential.

--Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing.

--Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential.

--Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt. As used in this paragraph, the term “biometric identification information” means:

1. Any record of friction ridge detail;

2. Fingerprints;

3. Palm prints; and

4. Footprints.

--Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt.

--"identification and location information" means the:

a. Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate;

b. Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and

c. Name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate.

2. Identification and location information held by an agency is exempt if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information:

a. A written request to exempt such information from public disclosure; and

--Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt.

Section 119.0713 adds:

--Complaints and other records in the custody of any unit of local government which relate to a complaint of **discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing** are exempt until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

--The **audit report of an internal auditor and the investigative report of the inspector general** prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law. An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local

government. Audit work papers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

--Any data, record, or document used directly or solely by a municipally owned utility to prepare and submit **a bid** relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt.

3. What (if anything) is the difference between an exempt public record and a "confidential and exempt" public record?

The Florida Constitution and Florida Public records laws seem to use the terms "exempt" and "confidential and exempt" almost interchangeably. Sometimes the word "exempt" is used and sometimes "confidential and exempt" is the phrase. However, under the maxim of statutory construction that "each word is to be given meaning" there must be some difference.

The term "exemption" is a defined term in Section 119.011(8) Fla. Stats.:

> "Exemption" means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution.

The term "confidential" is not defined in the chapter. Both are used in Article I, S. 24 of the Florida Constitution:

> Every person has the right to inspect or copy any public record…except with respect to records **exempted** pursuant to this section or specifically made **confidential** by this Constitution.

The Courts have interpreted the difference in several cases. In a case by a television station against a school district[11] seeking disclosure of redacted transportation student discipline forms and school bus surveillance videotapes, the Court of Appeal held that the school board could not disclose records, **even with the personally identifying information redacted**. This is because they were both confidential and exempt under a student privacy rights provision of another statute.[12] The Court said:

> There is a difference between records the Legislature has determined to be **exempt** from The Florida Public Records Act and those which the Legislature has determined to be **exempt** from The Florida Public Records Act **and confidential**.

If information is made confidential in the statutes, the information is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute. In Lee County v. State Farm Mutual Automobile Ins. Co., 634 So.2d 250 (Fla. 2d DCA 1994), a county policy requiring notarized signature on all release forms was determined a valid means of protecting records made confidential by the Legislature. In Alice P. v. Miami Daily News, Inc., 440 So. 2d 1300 (Fla. 3d DCA 1983), rev. denied 467 So. 2d 697 (Fla. 1985) confidential information contained in a license application submitted to a state agency was determined not subject to disclosure)…

If records are not confidential but are only exempt from the Public Records Act, the exemption does not prohibit the showing of such information. As stated in Williams v. City of Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla.1991), appeal after remand, 619 So.2d 983 (Fla. 5th DCA 1993), "the exemption **does not prohibit** the showing of such information. There are many situations in which investigators have reasons for displaying information which they have the option not to display." The focus in determining whether a record loses its public record exemption is on the policy behind the exemption and not the simple fact the information has changed agency hands. See Ragsdale v. State, 720 So. 2d 203, 206 (Fla. 1998). Once an agency released to the public certain information the Legislature has protected from disclosure by a Public Records Act exemption, no further purpose is served by the exemption and full public access to the information is warranted. Downs v. Austin, 522 So. 2d 931, 935 (Fla. 1st DCA 1988).

Four Florida cases have dealt with the confidentiality and exemption provisions of section 228.093(3)(d). In Human Rights Advocacy Committee For Developmental Services For District VIII v. Lee County School Board, 457 So. 2d 522, 525 (Fla. 2d DCA 1984), the court stated that section 228.093(3)(d) of the Florida School Code "recognizes a strong privacy interest of every student with regard to his **educational records**." Since section 228.093(3)(d) did not contain specific language giving the Human Rights Advocacy Committee access to certain school records, the court declined "to usurp the legislative function by creating a judicially prescribed exception to the protection afforded by the statute." Id.

In Tampa Television, Inc. v. School Board of Hillsborough County, 659 So. 2d 331 (Fla. 2d DCA 1995), appeals judge Parker specially concurred that a **videotape recording produced by a mounted video camera taping students while riding on public school buses are student "records and reports"** pursuant to section

228.093 because these recordings could be utilized to produce "verified reports of serious or recurrent behavior patterns," which section 228.093(2)(e) includes in its lists of materials considered as part of a student's record. The issue before the court in Tampa Television has been agreed to in the instant case. WFTV agrees, at least for purposes of this case, that the Surveillance Tapes and Transportation Student Discipline Forms are "records and reports" under section 228.093(2)(e).

In F.A.T. v. State of Florida, 690 So. 2d 1347 (Fla. 1st DCA 1997), the court addressed the issue of whether attendance records were subject to disclosure under section 228.093. Once the court decided that the attendance records fell within the definition of "records and reports," the court concluded that the **attendance records were not subject to public disclosure**. At that juncture, the only other issue considered by the court in the F.A.T. case was whether any of the statutory exceptions to nondisclosure applied. In the instant case, WFTV stipulated that the Subject Records are "records and reports," and WFTV does not argue that any of the statutory exceptions to nondisclosure apply. Because it does not appear that redaction was an issue in the F.A.T. case, the F.A.T. decision is not instructive on that issue.

Finally, in Florida State University v. Hatton, 672 So.2d 576 (Fla. 1st DCA 1996), a Florida State University ("FSU") student, in a Chapter 120 administrative rule challenge, sought a prehearing subpoena of "formal orders applying to Student Conduct Code cases brought against any FSU student over the most recent two years, with any and all information by which a student could be identified redacted from the orders." Id at 577.

On appeal of the non-final administrative order requiring FSU to produce the formal orders redacted of any and all information by which a student could be identified, FSU argued that the redacted records sought to be produced were confidential pursuant to section 228.093(3)(d). The First District Court of Appeal reversed the administrative order and found an abuse of discretion by the hearing officer in requiring FSU to produce redacted, confidential student records. It was only after the Hatton court expressly concluded that the redacted records were confidential that the court conducted a balancing test for discovery purposes. The FSU student's interest in obtaining the confidential documents (the redacted formal orders) was "outweighed by the substantial privacy interest in the documents which the legislature has accorded to the subject students and

their parents, and the interest of the University in avoiding penalties which may ensue from disclosure." Id. at 580.

Regarding the confidentiality of the redacted records, the Hatton court stated that, "The **right of privacy** set forth in section 228.093(3)(d), Florida Statutes, attaches to records or reports which permit the personal identification of a pupil or student." Id. at 578. Noting that section 228.093(2)(e)6. contains no definition of "data which permit[s] the personal identification of a pupil or student," the Hatton court found guidance in "the federal counterpart of this statutory provision"…Utilizing the definition of "Personally Identifiable Information" contained in FERPA, the court then concluded, "We find that the formal orders regarding FSU students are confidential records and reports within the meaning of section 228.093(3)(d), Florida Statutes (2001), because they contain identifying information about the subject student and other students who are accomplices, witnesses and victims." Id. at 579.

The FSU student argued that the documents could be edited to delete all personally identifying information from them, thus rendering the redacted documents unprotected. The same argument has been made by WFTV. The Hatton court rejected this redaction argument as follows:

This argument assumes that the editing and release of edited reports and records is permissible pursuant to section 228.093(3)(d). However, there is only one provision in section 228.093-section 228.(3)(a) 2. which provides for partial release of information contained in confidential records and reports. Section 228.093 (3)(x) 2. **does not provide for the release of edited information** regarding persons other than the student requesting the release…

The Hatton court found the redaction argument without merit. Because neither the Division of Administrative Hearings nor its hearing officers were "a court of competent jurisdiction" or otherwise included in the specified persons or organization authorized to receive confidential student information under section 228.093(3)(d)1….12, **release of even the redacted student records was prohibited**. Because the FSU student was not represented by an attorney in the proceedings below, the "attorney of record" exception in the then section 228.093(3)(d)10.a. also did not apply. The Hatton court held that the hearing officer abused his discretion in requiring FSU to produce the redacted, confidential student records…

> The Florida Legislature also provides any aggrieved parent, guardian, pupil, or student with a private cause of action for violation of any provision of section 228.093. The aggrieved party shall have an immediate right to bring an action in the circuit court to enforce the violated right by injunction. The aggrieved party who brings such an action and whose rights are vindicated may be awarded attorney's fees and court costs. See § 228.093(5), Fla. Stat. (2001)...
>
> The judgment is affirmed, but we certify the following question to be of great public importance:
>
> Do the provisions of section 228.093(3)(d) create an exemption from the Public Records Law for the entire contents of a student's record within which there is a student's personally identifiable information or does it create an exemption only for such personally identifiable information within that record so that upon a proper request, the custodian must redact the personally identifiable information and produce the balance of the record for inspection under section 119.07(2)(a)? (**Emphasis added**.) [Note: The Florida Supreme Court did not hear or decide any appeal of the case.]

4. How does the clerk/custodian handle such records?

The conclusion from this case and its predecessors is that there is a difference between exempt and confidential. The consequences of intentionally, or unintentionally, disclosing the record are gravely different depending upon whether the record is confidential or merely exempt. The handling of the production of the document (producing, producing with redactions, or declining to produce) will depend upon the designation, not only in the Public Records Act but also in any other federal or state law.

The consequences of producing a confidential record or confidential portion of a record could be great. In the TV case (above) the Court hints that there may be civil liability (money damages) for violating a student's right of privacy. An award of attorney's fees for vindication of rights in some cases is discussed above. In Sec. 119.071 itself there are specific penalties for disclosing social security numbers. In Sec. 119.10 there are the following penalties for violation of the chapter:

> (1) Any **public officer** who:
>
> (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding $500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any **person** who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a **misdemeanor** of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Section 119.105 [Protection of victims of crimes or accidents] commits a **felony** of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Many of the confidential records are maintained in departments other than a clerk's office, such as police, EMS/Fire, or Human Resources, Legal Department, or Administratiion. Some are with elected or appointed officials. Too often, the same record is located in several offices, making location and production complicated and time-consuming. Regardless of which department or person is the custodian of a particular type of record it is important for requests to be handled routinely, but with all due dispatch.

The first and perhaps most important step in records management is to **identify** any documents that might be public, non-exempt, non-confidential, and therefore producible *in toto*, and get them into the public domain, such as on a website. This might entail use of the many new search technologies now being implemented in courts and public agencies throughout the land. However, the demand will grow exponentially, so the agency might as well get with it. Probably 95% or more documents can go into the public domain; i.e., on the website or a public access site. As people get more familiar with use of public access to the records, the time and expense incurred in responding to public records requests should subside. A word of caution: With less than half of the people in Florida owning or capable of using a computer, it is unrealistic to go entirely "paperless".

The second step is to **review existing agency documents** such as applications, purchase orders, employment files, etc. that really should be open to public inspection but might have some confidential information embedded in them (such as social security numbers, bank account numbers, trade secrets, private information, etc.) and change the forms to remove the confidential information.

Most governmental forms are too long and complicated for their purpose anyway. An example might be the overuse of swearing before notaries on applications. Virtually nobody is prosecuted for perjury on a local application. The logical penalty is that the permit is voided. The goal is to have as few documents as possible that would contain any confidential or even

exempt information. The main reason that forms are and remain unduly cumbersome is that invariably they were produced by staff with little legal input, and it takes a concentrated effort to whittle them down to bare necessities or to make them coordinated.

When receiving a public records request, **coordinate** with the other departments or persons who might have the records, to expedite the request. Implement a system, but make it clear that the system is **intended to expedite**, not bureaucratize, public record production. The more processes and rules, the greater is the likelihood that the process will get bogged down. The judicial system is pretty unsympathetic to internally-based excuses for delay.

Train, train, train. The agency clerk is a logical person to take the lead. However, each department should have one or more persons highly trained to deal quickly with public records requests, to identify if there is an exemption or confidentiality issue, and to know enough to get help if needed. With testers abounding, it is important to get the correct answers quickly.

Access to the agency's **legal** staff is critical. Public records issues are sometimes given to the newest assistant attorney, and that may be a mistake. Worse is deciding to just take a chance that the decision to produce, withhold or redact (in the difficult case) is correct, without consulting with legal staff.

Finally, the most important thing of all is **attitude adjustment**. Public records requests are often not perceived as important to line staff. And often they are perceived as meddlesome. But as long as the Constitution and a myriad of state regulations and court cases say they are a critical part of governing in Florida, they should be professionally handled, just like everything else. Public records management and production is just part of the job.

5. Special Cases & Trends

Common Errors: Regardless of training, there are common errors in public records production that keep recurring—requiring the requestor to fill out a form; requiring requestor to identify himself or herself; requiring the requestor to identify a purpose for the request; sending the requestor to a designated person in another office when the record, or a copy of it is located where the requestor is; charging a "special service charge" when there is no inordinate amount of time that will need to be expended to get it; requiring requestor to use a computer; taking an unreasonable amount of time to get records; failing to cite the statutory basis for an exemption or confidentiality; overcharging for use of agency's computer program for locating records; trying to convert the public records process into a money-making project; and worst, sparring with the requestor. Fish in barrels do not engage in a duel with the shooter.

Special Case: Friedburg v. Gainesville-Circuit Court Eighth Judicial Cir. Alachua County, Case No.: 2012-CA-360 (September 18, 2012). Former employee, through her attorney, sought every e-mail to or from her over 7 years (estimated 150,000). The City initially estimated an up-front charge of about $40,000, mostly due to need to review and redact confidential and/or exempt information. It was later reduced to $13,000 after the technology department indicated that there were a "mere" 52,000 e-mails. After a trial in which the City offered testimony *inter alia*, that it took an average of a minute to review (and redact or produce) each record, the Court upheld the City's position. The case was won by the city due in part to careful review of the request by the Senior Assistant City Attorney (Stephanie M. Marchman) for the Gainesville City Attorney's Office. She tried working with the requestor, documenting same, reduced the cost estimate when the Information technology services was able to reduce the scope, and showed a reasonable basis for the remaining estimated charges.

Trends:

Testers: Historically, most challenges to public records non-production came from attorneys dealing with real-life conflicts over public records needed for litigation. More recently, a lot of litigation is brought by activist "testers" or self-designated "secret shoppers" who go from agency to agency to see if the public records will be produced or withheld. Upon perceiving a flaw, they litigate, often getting damages and attorneys' fees. This is now new. It has been fostered and supported by the federal government in Fair Housing cases for decades. It is a common tactic in Americans With Disabilities Act cases and a host of other federal and state laws. The best way of dealing with this is to avoid the annoyance response, produce the records, and allow them to be on their way.

Information Services: The use of computer technology is at once heaven-sent and a problem. As with litigation support, where it is common to deal with 15-20,000 documents in pre-trial records requests, public records mining is only as good as the program used and the training of those using the program. If the program operator does not understand anything more than a key-word search, the program will inevitably kick out over-inclusive results. Trying to charge for thousands of useless and irrelevant e-mails and other documents is frustrating to the requestor and cannot realistically be a lawful basis for a charge. This technology is still in its infancy and is largely in the control of computer services personnel rather than agency clerks. The adage concerning the stupidity of computers is apt: "A computer will do what you tell it to do, not what you want it to do." Similarly, the IT services providers must have public records training in order to have an idea of how to make the computer "smart".

Social media: As with Government-in-the Sunshine, the use of social media causes challenges to the keeping, finding and production of public records. Twitter, Instagrams, Linked-In, Facebook, and other social media have been cited as merely other means of doing public

business. Thus, it follows that those media would be treated as public records, just like e-mails, letters and other records.

Unfortunately, the Florida Attorney General's inquiry into the issue of public record and sunshine requirements for social media was dropped when the former Attorney General left office in an unsuccessful run for Governor. Notably, the current Attorney General's website provides for a News Feed and for Twitter tweets. However, it would follow that for a social media site to be able to be used in Florida, the message should be capable of being retrieved as a public record. If the National Security Agency can find them, presumably they are kept somewhere.

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[1] Robert D. Pritt is a partner in the law firm of Roetzel & Andress; is Board Certified in City, County & Local Government; represents cities and other local governments and has served as city attorney for Naples since 2002. Any views contained or expressed in any presentation are solely those of Mr. Pritt and for educational purposes. Note also: The statutory citations contained below are to the 2012 statutes. There were minor changes in 2013 but electronic version of Florida Statutes (2013) is not available as of printing.

[2] Section 119.011(7) "Duplicated copies" means new copies produced by duplicating, as defined in s. 283.30. refers to Section 280.30(3) "Duplicating" means the process of reproducing an image or images from an original to a final substrate through the electrophotographic, xerographic, laser, or offset process or any combination of these processes, by which an operator can make more than one copy without rehandling the original.

[3] (2) "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 including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. (This is interpreted by Attorney General Opinions and case law.)

[4] Published by The First Amendment Foundation in conjunction with the Florida Attorney General's office. Most recent is the 2013 edition, www.floridafaf.org. Also available online at the Florida Attorney General's Website www.myfloridalegal.com.

[5] SECTION 24. Access to public records and meetings.—(a) 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.

. . . .

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

[6] National Collegiate Athletic Ass'n v. Associated Press, 18 So.3d 1201, (Fla.App. 1 Dist., 2009).

[7] State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003).

[8] Rachel Morningstar Hoffman, a Florida State University student and Tallahassee Police CI, was murdered during a drug sting that went bad in 2008. The Florida Legislature adopted "Rachel's Law" to tighten protocols for handling and use of CIs. The City of Tallahassee paid $14 million to her family in a 2012 Claims Bill. A potentially similar dispute involving the murder of Jamie Seeger in Citrus County is proceeding, and part of it involves confidentiality of public records.

[9] 119.071 General exemptions from inspection or copying of public records.—(1) AGENCY ADMINISTRATION.—

(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A person who has taken such an examination has the right to review his or her own completed examination.

(b)1. For purposes of this paragraph, "competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

3. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d)1. A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

2. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(e) Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from s. 119.07(1).

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive shall not prohibit an agency head from sharing or exchanging such software with another public agency.

(2) AGENCY INVESTIGATIONS.—

(a) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

(c)1. Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.a. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in s. 252.34, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office

of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing the substance of a confession of a person arrested is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(f) Any information revealing the identity of a confidential informant or a confidential source is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(g)1.a. All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

b. This provision shall not affect any function or activity of the Florida Commission on Human Relations.

c. Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. When the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

(h)1. The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by chapter 827.

b. Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

(i) Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(j)1. Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is

exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from s. 119.07(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding this section.

2.a. Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145, which reveals that minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies that minor as the victim of a crime described in this subparagraph, held by a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any governmental agency that is authorized to have access to such statements by any provision of law shall be granted such access in the furtherance of the agency's statutory duties, notwithstanding the provisions of this section.

b. A public employee or officer who has access to a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in chapter 800 or in s. 794.011, s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s. 847.0145 may not willfully and knowingly disclose videotaped information that reveals the minor's identity to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order entered by the court having jurisdiction of the alleged offense. A person who violates this provision commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) SECURITY.—

(a)1. As used in this paragraph, the term "security system plan" includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;

b. Threat assessments conducted by any agency or any private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

3. Information made confidential and exempt by this paragraph may be disclosed by the custodian of public records to:

a. The property owner or leaseholder; or

b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

(b)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or

other structure owned or operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed:

a. To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

b. To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or

c. Upon a showing of good cause before a court of competent jurisdiction.

4. The entities or persons receiving such information shall maintain the exempt status of the information.

(c)1. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development, which records are held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to any such records held by an agency before, on, or after the effective date of this act.

3. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to the owner or owners of the structure in question or the owner's legal representative; or upon a showing of good cause before a court of competent jurisdiction.

4. This paragraph does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

5. As used in this paragraph, the term:

a. "Attractions and recreation facility" means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

(I) For single-performance facilities:

(A) Provides single-performance facilities; or

(B) Provides more than 10,000 permanent seats for spectators.

(II) For serial-performance facilities:

(A) Provides parking spaces for more than 1,000 motor vehicles; or

(B) Provides more than 4,000 permanent seats for spectators.

b. "Entertainment or resort complex" means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex.

c. "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that:

(I) Provides onsite parking for more than 250 motor vehicles;

(II) Encompasses 500,000 square feet or more of gross floor area; or

(III) Occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public.

d. "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that:

(I) Encompasses more than 400,000 square feet of gross floor area; or
(II) Provides parking spaces for more than 2,500 motor vehicles.
e. "Office development" means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area.
f. "Hotel or motel development" means any hotel or motel development that accommodates 350 or more units.
(4) AGENCY PERSONNEL INFORMATION.—
(a) The social security numbers of all current and former agency employees which numbers are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.
(b)1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.
2.a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this exemption, "dependent child" has the same meaning as in s. 409.2554.
b. This exemption is remedial in nature and applies to personal identifying information held by an agency before, on, or after the effective date of this exemption.
c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.
(c) Any information revealing undercover personnel of any criminal justice agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.
2.a. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).
b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).
c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).
d. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities

attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the

names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

5. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

(5) OTHER PERSONAL INFORMATION.—

(a)1.a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2.a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. An agency shall identify in writing the specific federal or state law governing the collection, use, or release of social security numbers for each purpose for which the agency collects the social security number, including any authorized exceptions that apply to such collection, use, or release. Each agency shall ensure that the collection, use, or release of social security numbers complies with the specific applicable federal or state law.

c. Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall provide that individual with a copy of the written statement required in subparagraph 2. The written statement also shall state whether collection of the individual's social security number is authorized or mandatory under federal or state law.

4. Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

5. Social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of

social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

6. Social security numbers held by an agency may be disclosed if any of the following apply:

a. The disclosure of the social security number is expressly required by federal or state law or a court order.

b. The disclosure of the social security number is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.

c. The individual expressly consents in writing to the disclosure of his or her social security number.

d. The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224.

e. The disclosure of the social security number is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph.

f. The disclosure of the social security number is for the purpose of the administration of health benefits for an agency employee or his or her dependents.

g. The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.

h. The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.

7.a. For purposes of this subsection, the term:

(I) "Commercial activity" means the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., or verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information. It does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(II) "Commercial entity" means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

b. An agency may not deny a commercial entity engaged in the performance of a commercial activity access to social security numbers, provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers. The written request must:

(I) Be verified as provided in s. 92.525;

(II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;

(III) Contain the commercial entity's name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity, including the identification of any specific federal or state law that permits such use.

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8.a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding $500 per violation.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

(b) Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to bank account numbers and debit, charge, and credit card numbers held by an agency before, on, or after the effective date of this exemption.

(c)1. For purposes of this paragraph, the term:

a. "Child" means any person younger than 18 years of age.

b. "Government-sponsored recreation program" means a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs.

2. Information that would identify or locate a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. This exemption applies to records held before, on, or after the effective date of this exemption.

(d) All records supplied by a telecommunications company, as defined by s. 364.02, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e) Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(f) Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Governmental entities or their agents shall have access to such confidential and exempt records and information for the purpose of auditing federal, state, or local housing programs or housing assistance programs. Such confidential and exempt records and information may be used in any administrative or judicial proceeding, provided such records are kept confidential and exempt unless otherwise ordered by a court.

(g) Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term "biometric identification information" means:

1. Any record of friction ridge detail;
2. Fingerprints;
3. Palm prints; and
4. Footprints.

(h)1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

a. With the express written consent of the individual or the individual's legally authorized representative;

b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the individual;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and responsibilities.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

(i)1. For purposes of this paragraph, "identification and location information" means the:

a. Home address, telephone number, and photograph of a current or former United States attorney, assistant United States attorney, judge of the United States Courts of Appeal, United States district judge, or United States magistrate;

b. Home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and

c. Name and location of the school or day care facility attended by the child of such attorney, judge, or magistrate.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information:

a. A written request to exempt such information from public disclosure; and

b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

(j)1. Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information held by an agency before, on, or after the effective date of this exemption.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Note.—A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading "Public Records."B. Portions former ss. 119.07(6), 119.072, and 119.0721; subparagraph (2)(g)1. former s. 119.0711(1).

[10] 119.0713 Local government agency exemptions from inspection or copying of public records.—(1) All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision does not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency that is authorized to access such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties. This subsection does not modify or repeal any special or local act.

(2)(a) The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law. An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

(b) Paragraph (a) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) Any data, record, or document used directly or solely by a municipally owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption commences when a municipal utility identifies in writing a specific bid to which it intends to respond. This exemption no longer applies after the contract for sale, distribution, or use of the service, commodity, or tangible personal property is executed, a decision is made not to execute such contract, or the project is no longer under active consideration. The exemption in this subsection includes the bid documents actually furnished in

response to the request for bids. However, the exemption for the bid documents submitted no longer applies after the bids are opened by the customer or prospective customer.
History.—s. 1, ch. 86-21; s. 24, ch. 95-398; s. 1, ch. 95-399; s. 1, ch. 96-230; s. 1, ch. 2001-87; ss. 1, 2, ch. 2003-110; s. 7, ch. 2004-335; ss. 34, 35, 36, ch. 2005-251; ss. 3, 5, ch. 2008-57; s. 1, ch. 2011-87.Note.—
A. Additional exemptions from the application of this section appear in the General Index to the Florida Statutes under the heading "Public Records."B. Former s. 119.07(6)(p), (y), (z), (hh).
[11] WFTV v. School Board of Seminole, etc, et al. 874 So. 2d 48 (Ct. App. 5th Dist 2004).
[12] Section 228.093(3), Florida Statutes (2001).