2019 Florida Statutes 119 and 286: “The Sunshine Law”

State of Florida
PUBLIC RECORDS
AUTHORITY

- Florida law provides individuals a right of access to inspect or copy public records.
PUBLIC RECORD

1) All documents.
2) Made or received pursuant to law or in connection with the transaction of official business by any agency.
3) Made to formalize knowledge.
   - UPS Board is an Agency as defined under 119.011
   - Purpose of a document relates to official UPS Board actions or considerations
   - Document is transmitted
   - Document is not otherwise confidential or exempt
ANYTHING-REGARDLESS OF FORM-MADE OR RECEIVED IN CONNECTION WITH OFFICIAL BUSINESS

- **Public Records** (if made or received in connection with official business; final or draft form);
  - Written documents (hard copy or electronic)
  - Recordings (video or voice, including voicemail)
  - Text messages (to or from anyone regarding public business)
  - Photos
  - Electronic Communications (Email, social media)

- **Not Public Records**
  - Any of the above not made or received in connection with official business
    - Where to meet for lunch
  - Personal information on the public server
    - Between family members regarding personal matters
  - Information/explanation
MADE TO PERPETUATE, COMMUNICATE, OR FORMALIZE KNOWLEDGE

- Not every record made in connection with official business is prepared to perpetuate, communicate, or formalize knowledge.

- Drafts/Notes
  - General Rule: not exempt from public inspection
  - Personal use exception: preliminary drafts or notes prepared solely for personal use, and are not intended to be the final evidence of the knowledge recorded are not public records.
    - Personal notes used to remember certain information, used as precursors, document mental impressions that will later for part of a government record etc.
    - Not shared, circulated, or communicated with anyone else
    - Not referenced by a public record or during a presentation (portion disseminated = public record; portion not read= not public record)
    - Not used by an official to make a decision or take action
**Exempt**: not subject to public disclosure at the option of the agency; the agency can decide to waive the exemption if there is a statutory or substantial policy need for disclosure. In the absence of such a statutory or other legal duty, agency should consider whether the release of such information is consistent with the purpose of the exemption before determining whether to waive the exemption and disclose the information.

- Exempt records include:
  - Employee emergency contact information
  - Drug testing records
  - Deferred compensation
  - Personnel examinations
  - Sealed bids (limited time)
  - Pending and Current litigation

**Confidential**: not subject to public disclosure and can only be released as per the applicable statute.

- Confidential records include:
  - Social Security numbers
  - Bank account numbers
  - Medical Records
  - Adoption and birth records
  - Death certificates
  - Abuse records
HOW DO WE HANDLE A PUBLIC RECORD REQUEST-INTRAWEB

- Forward to agency’s public records liaison (Peggy Sellards)
- Liaison shall promptly acknowledge receipt, preferably in writing, to the requester (form acknowledgement letters are on the intraweb)
- Liaison responsible for clarifying requests if necessary and document such
- When responsive records are found the liaison will initially access for exempt or confidential portions
- Assessment of records and any exempt or confidential portions shall be finalized in consultation with the agency’s designated legal representative, who will provide the necessary language dealing with the exemptions for the transmittal letter
PENALTIES

- Negligent; no intent to violate
  - Noncriminal Infraction
  - Up to a $500 fine

- Knowing or willful violation
  - F.S. 119.105 violation (protection of crime victims)
    - 3rd degree felony
    - Up to $5000 penalty
    - Up to 10 years in prison
    - Subject to suspension and removal/impeachment
  - All other provisions
    - 1st degree misdemeanor
    - Up to a $1000k fine
    - Up to 1 year in prison

- Unknowing violation
Public Meetings
(1) All **meetings** of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which **official acts are to be taken** are declared to be **public meetings open to the public at all times**, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meetings. The board or commission must provide **reasonable notice** of all such meetings.
The Sunshine Law applies to appointed or elected boards (AGO 73-223), as well as those created by interlocal agreement (AGO 84-16). Specifically, it applies to:

- Final decision-making boards
- Advisory boards with decision-making authority (Sarasota Citizens for Responsible Government v. City of Sarasota, 48 S.3d 755, 762 (Fla. 2010))
  - Recommendations constitute “decision-making” (Spillis Candela & Partners, Inc. v. Centrust Savings Bank, 535 So.2d 694)
  - Fact-finding exemption: advisory boards vested with only pure fact-finding or information-gathering authority are exempt from the Sunshine Law.
- Staff committees if staff has been vested with decision-making authority (Wood v. Marston, 442 So.2d 934 (Fla. 1983))
  - Examples: narrowing down an issue, or ranking proposals on behalf of a Sunshine body
  - It is the nature of the acts performed that govern, rather than the makeup of the committee
“Meeting” (Hough v. Stembridge, 278 So.2d 288 (Fla. 3d DCA 1973)):

- **Any gathering**, whether formal or casual
  - Official board meetings, workshops, organizational sessions
  - Verbal conversations (phone, Skype)
  - Electronic Written conversation (email/text/Facebook/Twitter/blogs)
  - De facto (use of staff or other liaisons to create conversation between members)
  - Fact-finding-investigative trips by boards with final decision-making authority, or trips by advisory boards if discussions ensure regarding matters that will foreseeably come before the board

- Any **two or more** members of the same board

- To discuss some matter on which **foreseeable action** could be taken by the board.

*Substance over from*
MEETING REQUIREMENTS

➢ Reasonable notice
  ▪ Reasonableness depends on the nature of the meeting
  ▪ Must provide the media and general public reasonable opportunity to attend

➢ Reasonable opportunity to be heard (F.S. 286.0114(2))
  ▪ Allow public comment on any proposition coming before a board or commission

➢ Accessible:
  ▪ Must be held in facilities that do not discriminate or unreasonably restrict access

➢ Minutes:
  ▪ Minutes must be taken and promptly recorded
  ▪ A verbatim record is not required
- One Bite Rule: Conversations require a response, therefore an initial statement or a question will not create a violation.

- No Agenda required.

- No abstaining from a vote. (See F.S. 286.012, prohibits members from abstaining from a vote unless voting conflict.)
Penalties

- Anyone who knowingly violates the Sunshine law is guilty of a Second Degree Misdemeanor, which allows for a $500 fine and up to 60 days in jail. Florida Statutes, Sections 286.011(3)(b), 775.082(4)(b), 775.083(1)(e).
- Removal from office is an alternative inclusive penalty
- A board found guilty will be subject to paying the attorney fees of the member of the public challenging the Board action.
- Any action taken by the board in violation of the Sunshine law is void.

Opportunity to Cure

- Where a board does not merely perfunctorily ratify or ceremoniously accept at a later or open meeting those decisions which were made at an earlier secret meeting but rather takes “independent final action in the Sunshine”, the decision of the board or commission will not be disturbed.”Tolar v. School Board of Liberty County, 398 So.2d 343 (Fla. 1979).
RESOURCES

• Intraweb
  • [https://www.youtube.com/watch?v=2fZ3ikqZ1o4&feature=youtu.be](https://www.youtube.com/watch?v=2fZ3ikqZ1o4&feature=youtu.be)

• County Attorney’s Office

• Online Sunshine - [http://www.leg.state.fl.us/Welcome/index.cfm?CFID=33535098&CFTOKEN=75ebfeefcfc841191-753AC11C-5056-B837-1AC43094A106F58B](http://www.leg.state.fl.us/Welcome/index.cfm?CFID=33535098&CFTOKEN=75ebfeefcfc841191-753AC11C-5056-B837-1AC43094A106F58B)