

Florida Public Records Law

TGIF EDITION

Florida Public Records Law

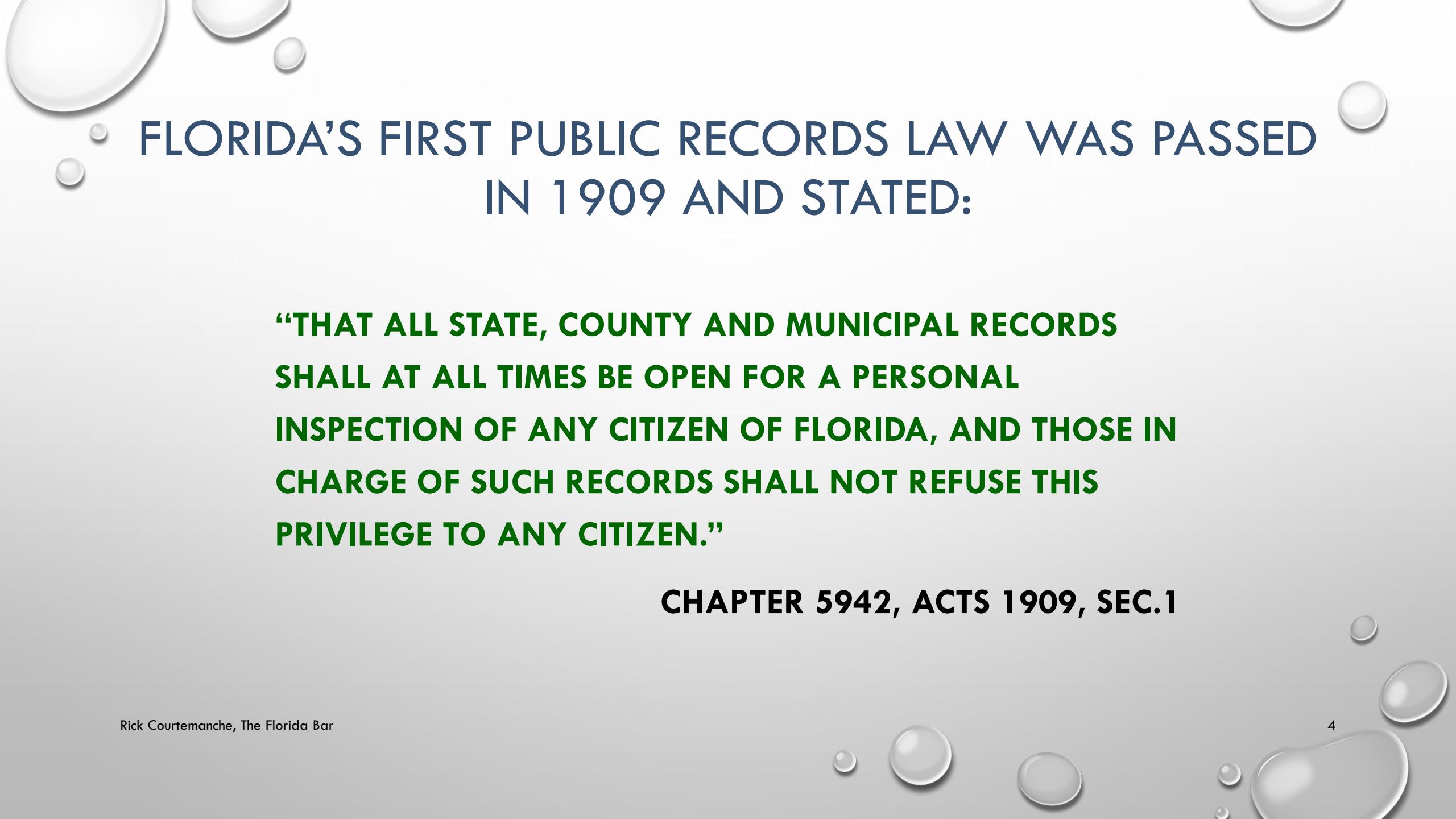
TGIF EDITION



Why Do People Make Public Records Requests?

- 1. The Requestor legitimately needs the records**
- 2. Conducting “audit” either personally or on behalf of some open government association/group**
- 3. Initiate public records litigation**
- 4. Embarrass the Agency**

ALL OF WHICH ARE IRRELEVANT!



• FLORIDA'S FIRST PUBLIC RECORDS LAW WAS PASSED IN 1909 AND STATED:

**“THAT ALL STATE, COUNTY AND MUNICIPAL RECORDS
SHALL AT ALL TIMES BE OPEN FOR A PERSONAL
INSPECTION OF ANY CITIZEN OF FLORIDA, AND THOSE IN
CHARGE OF SUCH RECORDS SHALL NOT REFUSE THIS
PRIVILEGE TO ANY CITIZEN.”**

CHAPTER 5942, ACTS 1909, SEC.1

Art. I, Sec. 24(a), Fla. Const. (1992)

- “**Every person has the right to inspect or copy any public record. . .This section specifically includes the legislative, executive, and judicial branches of government; . . . counties, municipalities, and districts; and each constitutional officer, board, and commission . . .”**
- **However, each branch has different laws or rules that regulate access to its records.**

Right of Access: Executive Branch

§119.011(2), F.S. - “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...

- **Definition of “agency” was intended to apply only to executive branch agencies and their officers and to local governmental entities and their officers, which do not include the legislature itself, the judiciary, or independent constitutional entities.**

Locke v. Hawkes, 595 So.2d 32 (Fla. 1992)

Right of Access: Legislative Branch

§11.0431, F.S. –

(1) [E]very person has the right to inspect and copy records of the Senate and the House of Representatives received in connection with the official business of the Legislature as provided for by the constitution of this state...

(5) Nothing herein shall be construed to limit the authority of each house of the Legislature to adopt rules pursuant to s. 24, Art. I of the State Constitution.

The Rules of the Florida House of Representatives - 2020-2022

Rule 14.1—Legislative Records

There shall be available for public inspection, whether maintained in Tallahassee or in a district office, the papers and records developed and received in connection with official legislative business, except as provided in s. 11.0431, Florida Statutes, or other provision of law...

Florida Senate Rules and Manual - 2020-2022

1.48—Legislative records; maintenance, control, destruction, disposal, fee for copies, and disposition

**(1) Public records, not exempted from public disclosure,
may be inspected by any person desiring to do so at
reasonable times, under reasonable conditions, and under
supervision of the person who has custody of the records,
or that person's designee.**

Right of Access: Judicial Branch

Rule 2.420, Fla.R.Jud.Admin.

(a) ... The public shall have access to all records of the judicial branch of government, except as provided below....

(b)(2) --“Judicial branch” means the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all other entities established by or operating under the authority of the supreme court or chief justice.

What is the definition of a “public record”?

- **The term “public record” is broadly defined in law as “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.”**
 - **Section 119.011(11), F.S.**
 - **Section 11.0431(4), F.S.**
 - **Rule 2.420(b)(1), Fla.R.Jud.Admin.**

What is the definition of a “public record”?

Shevin v. Byron, Harless, Schaffer, Reid, and Associates (379 So. 2d 633, Fla. 1980):

“...any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”

What is the definition of a “public record”?

- **Whether it is in final form or is designated by the agency as a “draft,” “working copy,” or “preliminary version.”**
- **Any record that is circulated for review or shared for comment or information is a public record.**
- **Notes prepared for personal use, not shared, may not be public record if not intended to be final evidence of knowledge.**
- **Inter-office memos are public records as they are the final evidence of knowledge.**

What is the definition of a “public record”?

- **Electronic Records are as much a public record as a paper document**
 - Seigle v. Barry, 422 So. 2d 63 (Fla. 4th DCA 1982)
- **Examples - Email messages, Social media posts, Text messages**
- **Section 119.01(2)(b), F.S. - Agency must consider, when designing or acquiring an electronic recordkeeping system, Whether the system is capable of providing data in a format consistent with public access.**

Tallahassee Democrat – 1/3/18

“City to Vote on Records Lawsuit Settlement”

- City of Tallahassee and Tallahassee Democrat attorneys have negotiated a settlement over a lawsuit alleging city officials violated the Florida Public Records Act...
- “The city has admitted it broke the state’s public records law and is now putting into place innovative new policies and procedures to make sure it doesn’t happen again.”...
- The suit alleges that City Manager Rick Fernandez, who is on a paid leave of absence pending the outcome of a state ethics investigation, deleted text messages that showed he asked a local lobbyist for four expensive sky box tickets to a Florida State football game in 2016.
- When a Democrat reporter asked the city to produce those text messages, the city said no such record existed.

What is the definition of a “public record”?

- **Records not made in connection of official business are not public record. Determining factor is not where records housed but the nature of the record**
 - State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003)
 - **Example: A public employee who sends a proposed budget to a supervisor for review is a public record regardless of whether sent from the employee's government computer or from his or her home computer using a personal e-mail account.**

What is the definition of a “public record”?

REQUESTS FOR INFORMATION

- Florida's public records law requires an agency to provide access to public records. But an agency is not required to provide information from those records. AGO 92-38
- Florida's public records law provides a right of access to inspect and copy an agency's existing public records; it does not mandate that an agency create new records in order to accommodate a request for information from the agency. Wooten v. Cook, 590 So.2d 1039 (Fla. 1st DCA 1991)

Who Can Request Public Records?

**Art. I, Section 24, Florida
Constitution – “Every person
has the right to inspect or
copy any public record...”**

**SO THE ANSWER
IS ANYONE!**



REQUESTOR MOTIVATION

- A “person’s motive in seeking public records is irrelevant.” Timoney v. City of Miami Civilian Investigative Panel, 917 So.2d 885, 886n.3 (Fla. 3rd DCA 2005)
- “Even though a public agency may believe” that a requestor is annoying and making public record requests for the sole purpose of harassment, “the public records are available to all . . . ” Salvadore v. City of Stuart, No. 91-812 (Fla. 19th Cir. Ct. December 17, 1991)

REQUESTOR MOTIVATION

- The “law provides any member of the public access to public records, whether he or she be the most outstanding civic citizen or the most heinous criminal.” Church of Scientology Flag Service Org., Inc v. Wood, No. 97-688CI-07 (Fla. 6th Cir. Ct. Feb. 27, 1997)
- “The fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida’s public records law.” Microdecisions, Inc. v. Skinner, 889 So.2d 871, 875 (Fla. 2nd DCA 2004)

PROCEDURAL REQUIREMENTS

Reasonable Conditions

- The right of access to public records “is virtually unfettered, save for statutory exemptions . . .” Thus, in the absence of a statutory exemption, the custodial agency must produce the requested records regardless of the number of records involved or the possible inconvenience to the agency.

Lorei v. Smith, 464 So. 2d 1330 (Fla. 2d DCA 1985)

PROCEDURAL REQUIREMENTS

Reasonable Conditions

EXECUTIVE BRANCH

- **Absent specific statutory authority, an agency cannot require that:**
 - **Requests for records be made in writing.** Dade Aviation Consultants v. Knight Ridder, Inc., 800 So.2d 302 (Fla. 3d DCA 2002)
 - **A requestor disclose his/her name, address, or telephone number.** AGOs **92-38** and **91-76**
 - **The reason for the request.** Timoney v. City of Miami Civilian Investigative Panel, 917 So.2d 885, 886n.3 (Fla. 3rd DCA 2005)

PROCEDURAL REQUIREMENTS

Reasonable Conditions

JUDICIAL BRANCH

- **Rule 2.420 (i) (1) - Requests for access to records shall be in writing....**
 - **2002 Court Commentary: The writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing.**

PROVIDING PUBLIC RECORDS: Who's responsible?

EXECUTIVE BRANCH

- §119.011(5), F.S. - “**custodian of public records**” is **defined in law as “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records.**
- §119.07(1)(b), F.S. - **The custodian of public records is authorized to designate another to permit inspection and copying of public records, but must disclose the identity of the designee to those who are requesting to inspect or copy public records.**

PROVIDING PUBLIC RECORDS: Who's responsible?

EXECUTIVE BRANCH

- **Although §119.011(5), F.S., defines “custodian of public records” as the person who is responsible for “maintaining the office having public records,” the Florida courts have concluded that the statutory reference to the records custodian does not alter the “duty of disclosure” imposed by s. 119.07(1) upon “every person” who has custody of a public record.”**
- **Puls v. City of Port St. Lucie, 678 So.2d 514 (Fla. 4th DCA 1996)**

PROVIDING PUBLIC RECORDS: Who's responsible?

JUDICIAL BRANCH

- **Rule 2.420(b)(3), Fla.R.Jud.Admin.** - The **custodian of all administrative records of any court** is the **chief justice or chief judge of that court**... As to all other records, the **custodian is the official charged with the responsibility for the care, safekeeping, and supervision of such records**. All references to “**custodian**” mean the **custodian or the custodian's designee**.

RESPONSE TIME

- How soon do I have to respond to a request?
 - The law and the court require that a response be in a reasonable time.
 - The courts have made it clear that public records are to be given attention.
 - *“The only delay permitted by the Act is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt”*

Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984)

RICK'S RULES



- **READ THE REQUEST: WHAT ARE THEY ASKING FOR?**
 - **If you can't understand ask for clarification.**
Sometimes a phone call makes sense.
 - **Many requestors don't understand the enormity of "any and all". Call for clarification.**
 - **Explain that there may be costs associated with the record request.**

PROCEDURAL REQUIREMENTS ELECTRONIC FORMAT

- **Everyone has a right to public records in “some meaningful form, not necessarily that which the applicant prefers.” Seigle v. Barry, 422 So. 2d 63, 66 (Fla. 4th DCA 1982)**
- **An agency is not ordinarily required to reformat its records and provide them in the particular form as demanded by the requester. AGO 08-29**

PROCEDURAL REQUIREMENTS ELECTRONIC FORMAT

- An agency must provide a copy of a public record in the format requested if the record is maintained in that format. If the record is not maintained in the format requested, an agency has the option of converting the record and charging a fee pursuant to s 119.07(4). F.S. - §119.01(2) (f), F.S.
- An agency is not required to provide public records in an electronic format other than the standard format routinely maintained by the agency. AGO 97-39

RICK'S RULES CONT.

- **Ignore the legalese (or the camera)!**
- **Anyone who deals with the public should be trained on public records law DO'S and DON'TS.**
- **Don't be afraid to say “I don't know, let me check.”**
- **Make sure someone in the agency is an expert.**

RICK'S RULES CONT.

- **Don't say NO unless you are sure.**
- **Responding promptly doesn't mean IMMEDIATELY!**
- **Give the requester an estimate of how long it will take to gather the records.**
- **No standing requests.**

RICK'S RULES CONT.

- **If you have the records and they are not covered by an exemption or confidentiality, produce them!**
 - Make sure to check any location where responsive records might be found which includes database systems, email system, share drives, paper files, third party vendors, outside counsel, etc.
 - **Many agencies get in trouble when they try to hide records because they are embarrassing to someone**

Does the public get access to all records that meet the public records definition?

- **No, Some records are either:**
 - 1) **confidential or;**
 - 2) **exempt from access.**



CONFIDENTIAL: FLORIDA CONSTITUTION

- **Generally, Confidential records CANNOT be released to public – may be released only to those persons or entities designated in the statute**
- **Agency must take reasonable steps to ensure they are not improperly released**
- **Art. I, Sec. 24(b) - Legislature solely authorized to create exemptions “no broader than necessary to accomplish the stated purpose of the law.”**
 - **Passed by 2/3 of each house**

EXEMPTIONS

- An “exemption” makes a specified record not subject to access requirements
- Generally, it is up to the discretion of the agency as to whether they want to release exempt records or not.
- Some Exemptions apply to a record for a period of time.
- Generally exemptions deal with personal or sensitive information about individuals, not government activities
 - i.e., personal identifying information or information of high risk of exploitation

CONFIDENTIAL/EXEMPT EXECUTIVE BRANCH

- **119.071, F.S. - General Exemptions**
- **Other confidential records can be found throughout Florida Statutes – “are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution”**



CONFIDENTIAL/EXEMPT JUDICIAL BRANCH

Rule 2.420(c), Fla.R.Jud.Admin

- (7) records that are confidential under state and federal constitutions and laws,
- (8) records made confidential by court rule, Florida statutes, prior case law, and JQC rules.
- Although the bar isn't viewed as an agency under Chapter 119, Rule 2.420(c)(7) specifically adopts the statutory exemptions. State v. Buenoano, 707 So. 2d 714 (Fla.1990)

CONFIDENTIAL RECORD EXAMPLE

§119.071(2)(h)1.b., F.S. –

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:

- Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), or chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.**

EXEMPTION - EXAMPLE



- §119.071(2)(c)1., F.S. - "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."

EXEMPTIONS EXAMPLES

- **§119.071(4)(d), F.S. – Home addresses, phone numbers, photographs, and dates of birth, etc.:**
 - **Current or former Law enforcement, judges, prosecutors, public defenders, firefighters, DCF investigators, Code enforcement officers, county tax collectors, GAL's, DBPR investigators, etc.**
 - **Agencies with this information that are not employers may maintain exemption only upon written request**

CLAIMING EXEMPTION/REDACTION

- **First, determine if the entire record is exempt or just a portion of the record.**
- **If entire record is exempt, state the basis for exemption and do not provide record.**
- **If a portion is exempt, redact the exempt information and state the basis for the exemption.**
- **Do not restrict access to the part of the record that is not confidential or exempt.**

RICK'S RULES AD NAUSEUM

- **Make sure redaction is permanent**
- **Redact with a scalpel, not a meat cleaver**
- **Know your Exemptions/Citations**
- **Cite your Exemptions with Specificity in your Response (§119.07(1)(e), F.S.)**

FEES FOR PUBLIC RECORDS

- Executive Branch - §119.07(4),
F.S. authorize and establish
fees for copies and labor
- Judicial Branch -
Fla.R.Jud.Admin. 2.420(m)(3)
 - “except for copies of court
records... the same as
those provided in section
119.07, Florida Statutes.”



FEES FOR PUBLIC RECORDS SPECIAL SERVICE CHARGE

§119.07(4)(d), F.S. - An agency may charge a reasonable fee for the extensive use of agency resources – personnel, information technology, or both – in addition to the actual cost of duplication.

- Such fees must be reasonable and based on actual costs incurred.
- “Extensive” is not defined – agencies should have policies in place to define what is extensive, i.e. more than 15 minutes, 30 minutes, 1 hour ,etc.

FEES FOR PUBLIC RECORDS ADVANCE DEPOSIT

- **Section 119.07(4), F.S. - The custodian of public records must furnish a copy or a certified copy of the [requested] record upon payment of the fee prescribed by law.**
- **Custodial agencies are authorized to require the payment of an advance deposit before proceeding with the effort and cost of preparing copies of requested public records.**

Malone v. City of Satellite Beach, No. 94-10557-CA-D (Fla. Cir. Ct. Brevard Co. December 15, 1995)

FEES FOR PUBLIC RECORDS

**Chapter 119 does not
contain a provision that
prohibits agencies from
charging indigent persons or
inmates the applicable
statutory fee to obtain
public records.**



MORE RICK'S RULES

- **Many people will want to inspect records because they are too cheap to pay.**
- **Labor can be charged even for inspection.**
- **Get paid BEFORE you do the work.**
- **It's Ok to put a deadline on payment.**
 - **"If we do not receive payment within 30 days, we will assume you no longer wish to receive the requested records, and we will close your request."**

RECORD RETENTION REQUIREMENTS

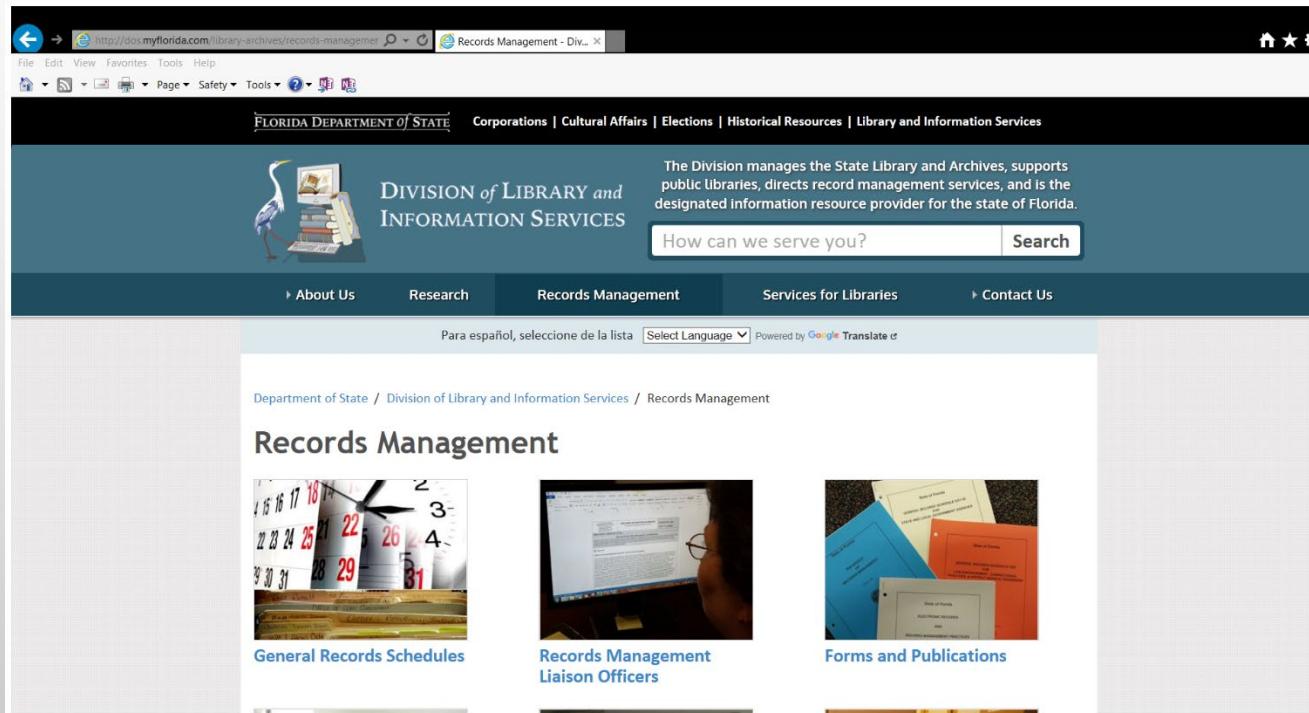
- **Retention period of a record is the duration of time for which the information should be maintained by an agency.**
- **Based on federal and state laws and regulations, general administrative practices, and fiscal management principles.**
- **Generally are minimum retention periods; public agencies may retain their records longer at their discretion.**

RECORD RETENTION REQUIREMENTS

EXECUTIVE BRANCH

- **§119.021(2)(a), F.S., requires the Division of Library and Information Services (DOS) to adopt rules establishing retention schedules and a disposal process for public records.**
- **§257.36(6), F.S., says that public records can be destroyed or otherwise disposed of “only in accordance with retention schedules established by the division.”**

HTTP://DOS.MYFLORIDA.COM/LIBRARY- ARCHIVES/RECORDS-MANAGEMENT/



RECORD RETENTION REQUIREMENTS

JUDICIAL BRANCH

- **Rule 2.430, FL.R.Jud.Admin. – Retention of Court Records**
 - **Permanently Recorded Records vs. Records Not Permanently Recorded**
- **Rule 2.440, FL.R.Jud.Admin – Retention of Judicial Branch Administrative Records**
 - **(b) Retention Requirements. Administrative records in the judicial branch shall be retained in accordance with the Judicial Branch Records Retention Schedule approved by the supreme court.**

LAST OF RICK'S RULES

- **If you have the record,
it must be produced
even if it could have
been disposed of
under your retention
schedule.**
- **Don't tolerate
hoarders!**



RESOURCES

Government in the Sunshine Manual

The First Amendment Foundation

336 East College Avenue, Suite 101

Tallahassee, Florida 32301

Phone: 850-224-4555; Fax 850-224-0435

www.floridafaf.org

E-manuals Available!

Florida Attorney General's Website

<http://myfloridalegal.com/pages.nsf/Main/314BA231F89C0C8A8525791B006A54E2>

QUESTIONS?

