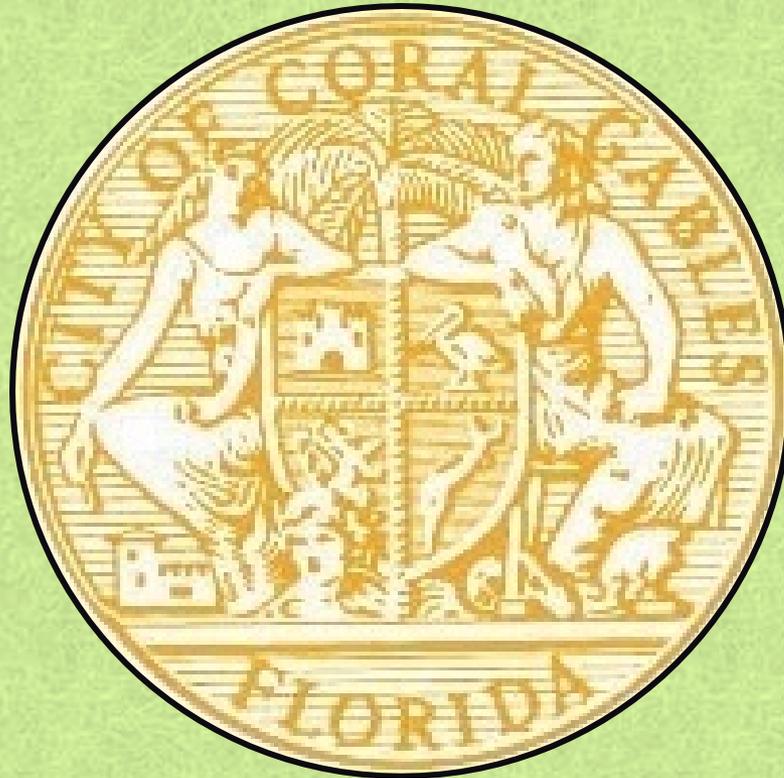


# BOARDS AND COMMITTEES ETHICS SEMINAR



The City of Coral Gables  
Office of the City Attorney  
November 6, 2015

# PUBLIC RECORDS

# ACCESS TO GOVERNMENT RECORDS

## Florida Constitution Section 24 (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 a municipality.”



# PUBLIC RECORDS LAW

## State Agencies and Local Governments

### Chapter 119, Florida Statutes

Section 119.07(1)(a), F.S., says “every person who has custody of the public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions and under supervision by the custodian of the public records.

# WHO IS RESPONSIBLE?

Section 119.011(5), F.S.

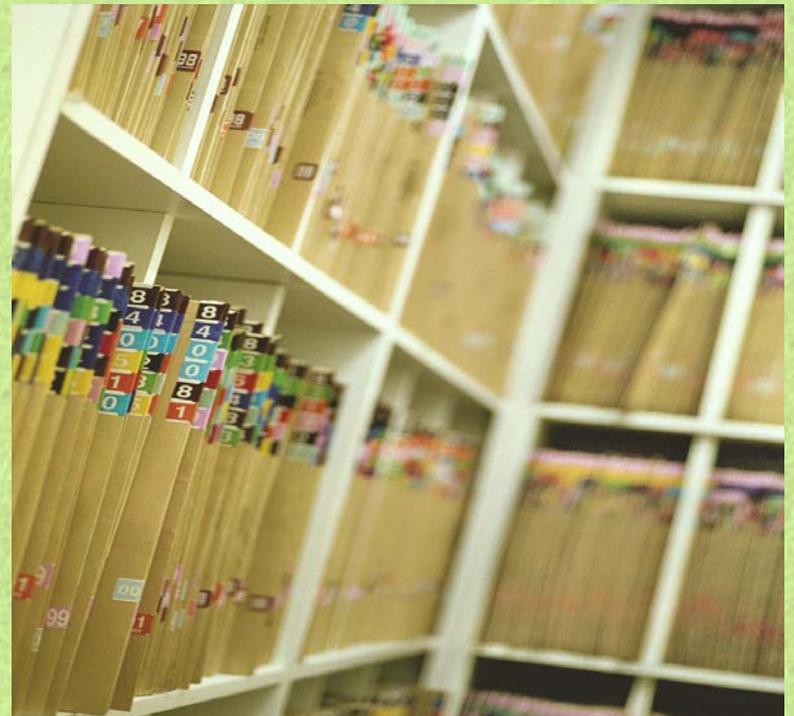
defines “**custodian of public records**” as the person who is responsible for “maintaining the office having the public records...”

The term “**custodian**” for purposes of the Public Records Act refers to all agency personnel who have it within their power to release or communicate public records.

- *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4th DCA 1998)

# WHO CAN REQUEST A PUBLIC RECORD?

The word “**person**” is defined to include individuals, firms, associates, joint ventures, partnerships, estate trusts,... corporations, and all other groups or combinations, regardless of whether the “person” is a citizen of the State of Florida.



# WHAT IS A PUBLIC RECORD?

**“Information stored in a public agency’s computer is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet...”**

- **Seigle v. Barry, 422 So. 2d 63, 65 (Fla. 4<sup>th</sup> DCA, 1982)**

**“E-mail messages made or received by agency employees in connection with official business are public records and subject to disclosure...”**

- **Advisory Legal Opinion 96-34 (1996)**

**BUT Private email stored in government computers does not automatically become a public record by virtue of that storage.**

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

# RESPONSE TIME

**Prompt Response:** Acknowledgment of a request to inspect or copy a public record must be made promptly and in good faith.

- Section 119.07(1)(c), F.S.

**Reasonable Right of Access:** The time it takes to locate a record, review it for exempt information, and provide a copy to the requestor.

- Section 119.07(1)(a) F.S.; *Tribune Company v. Cannella*, 458 So.2d 1075, 1078 (Fla. 1984)]



# FEEES

As a general rule, there is no fee for the mere inspection of a public record and fees for providing copies of public records must be statutorily authorized. The custodian of public records must furnish a copy of a requested record upon payment of the fee prescribed by law. If there is no statutorily prescribed fee, the record custodian can charge no more than 15¢ a page for paper copies.

# EXTENSIVE USE FEES

- If a request for records requires an “**extensive use**” of agency resources, whether personnel or information technology or both, an agency may charge a special service charge in addition to the per-copy charge or the actual cost of duplication.
- The extensive use fee, which must be reasonable and based on actual costs incurred, cannot be automatically applied.
- Local agencies have a great deal of flexibility in assessment of fees.



# RECORD RETENTION REQUIREMENTS

“If an assertion is made by the custodian of the public records that a requested record is not a public record... the requested record shall nevertheless, not be disposed of for a period of **30 days** after the date on which the request to inspect... was served”

– **Section 119(1)(h), F.S.**

# RECORD RETENTION REQUIREMENTS

**Section 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.

**Call the State Records Center**

**at**

**850.245.6750**

**<http://dlis.dos.state.fl.us/RecordsManagers>**

# EXEMPTIONS

If a record contains both exempt and non-exempt information, the keeper of the record must redact (delete) that which is exempt and provide access to the remainder.

– **Section 119(1)(d), F.S.**

If an agency denies a public records request in whole or in part, the agency must put the denial in writing and provide the exact statutory citation authorizing the denial if asked to do so by the requestor.

– **Section 119.07(1)(f), F.S.**



# EXEMPTIONS



There is a difference between information that is exempt from public disclosure and information that is confidential and exempt.

If information is exempt from public disclosure, the custodial agency may allow access to such information.

- **Williams v. City of Minneola**, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991). **Government-in-the-Sunshine Manual**, p. 123

Information that is confidential and exempt cannot be released except as specified by the exemption.

- **Government-in-the-Sunshine Manual** p. 122

# THING TO NOTE ABOUT PUBLIC RECORDS

- Public records request must be responded to in a reasonable time and in a reasonable manner.
- It is not mandatory that public records request be in writing.
- It does not matter the motivation of the person making a public records request.
- You do not need to create a record, in response to a request, if one does not exist.
- The record should be produced in the format that it is maintained.

# SANCTIONS

A knowing violation of ch. 119, F.S., is a 1<sup>st</sup> degree misdemeanor punishable by a fine of up to \$1,000 and a jail term not exceeding one year.

- **Section 119(1)(b) and (2)(a) F.S.**

An unintentional violation of public records law is a non-criminal infraction punishable by a fine not exceeding \$500.

Those who have intentionally violated the law can be suspended or removed from office.

- **Section 112.52(1), F.S.**

An agency that has been found to have violated the law- whether an intentional or unintentional violation will be required to pay attorney fees and court costs.

- **Section 119.12, F.S.**