

Florida Association of Charter School Authorizers

FLORIDA PUBLIC RECORDS ACT and FLORIDA SUNSHINE LAW

Presented by:
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Suzanne D'Agresta is a shareholder with Garganese, Weiss, D'Agresta & Salzman, P.A. She is certified by The Florida Bar as a specialist in City, County and Local Government Law, and has significant experience in transactional and litigation matters involving school boards. She concentrates her practice in the area of local government law. She is the recipient of the highest rating (AV-Preeminent) given by Martindale-Hubbell for legal ability and ethics. Ms. D'Agresta is recognized as a Florida Super Lawyer by *Law and Politics*. She is a member of the Florida School Board Attorneys Association, and served as its President in 2006. Ms. D'Agresta was the recipient of the 2017 C. Graham Carothers Award of Excellence, presented by the Florida School Board Attorneys Association. She was appointed to the City, County and Local Government Certification Committee for the maximum 6 year term and the Ninth Circuit Grievance Committee "D" for the maximum 3 year term. She is also a member of the National School Board Association/Council of School Attorneys, and The Florida Bar Education Law Committee.

Ms. D'Agresta currently serves as the school board attorney for the School Board of Indian River County, and has performed significant legal work for other school boards and municipalities in Florida. She is a frequent speaker on such local government issues as Sunshine Law, public records, public procurement, student discipline and employment matters.

Ms. D'Agresta is admitted to practice in Florida state and federal courts. She is admitted to The Florida Bar, and the Bars of the United States District Court for the Middle and Southern Districts of Florida, the United States Court of Appeals for the Eleventh Circuit and the Supreme Court of the United States. She earned her law degree from the University of Florida, and received her Bachelor's degree from the University of Central Florida.

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I. Florida's Public Records Act

A. Charter School Statutory Requirement

1. Charter schools shall comply with Chapter 119 regarding public records – Section 1002.33(16)(b)2., Florida Statutes.

B. The Rule – Chapter 119, Florida Statutes

1. Public records include 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 . . . in connection with the transaction of official business. Section 119.011(12), Florida Statutes.
2. All materials made or received in connection with official business which are used to perpetuate, communicate, or formalize knowledge are public records subject to disclosure. *Shevin v. Byron*, 379 So.2d 633 (Fla. 1980).
3. Transitory records communicate information of short-term value, are not intended to formalize or perpetuate knowledge and do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt. Such records can be deleted once administrative value is lost. **Examples:** reminders of meetings or appointments, most telephone messages, announcements of official events.

C. What Does That Mean To Me?

1. The public record requirements apply once the charter contract is “effective.” Op. Att’y Gen. Fla. 01-23 (2001).
2. Email messages and other electronic communications made or received in connection with official business are public records subject to disclosure, in the absence of exemption. Op. Atty’ Gen. Fla. 96-34 (1996); Op. Att’y Gen. Fla. 01-20 (2001).
3. Public records may not be destroyed except in accordance with retention schedules approved by the Division of Library and Information Services of the Department of State. Op. Att’y Gen. Fla. 96-34 (1996). Remember the Orange County paid sick leave initiative a/k/a “text gate.”
4. Personal emails stored in a government owned computer are not made or received in connection with the transaction of official business and therefore do not fall within the definition of public records subject to disclosure by virtue of their placement on a government owned computer system. *State v. City of Clearwater*, 863 So.2d 149 (Fla. 2003).

C. What Does That Mean To Me? – cont'd

5. If tweets sent by public officials are public records, then the list of blocked accounts connected to those public record tweets could be a public record. Informal Op. Att'y Gen. Fla., June 1, 2016.
6. Notes and non-final drafts are public records if the purpose of the document is to perpetuate, communicate, or formalize knowledge.
 - a. Working papers used in preparing a budget.
 - b. Personal notes used as a reference in discussing an issue at a board meeting or workshop.

However, personal notes taken in the course of conducting official business by a public employee are not public records if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge. **WARNING:** The longer the notes are maintained the closer in nature they appear to be documents which would perpetuate, communicate, or formalize knowledge, and could be characterized as public records. Op. Att'y Gen. Fla. 2010-55 (2010).

7. Records of telephone calls made from city owned telephones are public records, even if the call is personal. *Bill of Rights v. New Smyrna Beach* (2010).
8. Public employee personnel files are public records, with some exceptions such as social security numbers, medical records and direct deposit records.

D. Penalties for Non-Compliance

1. Non-criminal infraction – fine not exceeding \$500.00. Section 119.10(1)(a), Florida Statutes.
2. Criminal infraction – if willfully and knowingly violate Public Records Act, guilty of a first degree misdemeanor. Section 119.10(2), Florida Statutes.
 - a. Imprisoned up to one year.
 - b. Monetary fine not exceeding \$1,000.00.
3. A civil lawsuit could be filed to force the disclosure of public records, and the Court could award attorney’s fees and costs.
4. Orange County failed to timely deliver copies of records related to a dangerous dog investigation requested by Ms. Hewlings. The County finally complied with the request, but only after the Court entered an order directing it to produce the records within forty-eight (48) hours. Essentially, this amounted to a forty-five (45) day delay in producing the requested records. The Appellate Court concluded that an unjustified delay in responding to a request for public records is the equivalent of unlawful refusal to produce records, and Ms. Hewlings was entitled to recover her attorney’s fees for bringing a lawsuit to obtain records. If a person asks for a specific file or a discreet set of documents, there is little tolerance in the courts for delay. *Hewlings v. Orange County* (2012).

II. Florida's Sunshine Law

A. Charter School Statutory Requirement

1. Charter schools shall comply with section 286.011, Florida Statutes. Section 1002.33(16)(b)1., Florida Statutes.
2. Each charter school's governing board must hold at least two public meetings per school year in the school district where the charter school is located. The meetings must be noticed, open, and accessible to the public, and attendees must be provided an opportunity to receive information and provide input regarding the charter school's operations. The appointed representative and charter school principal or director, or designee, must be physically present at each meeting. Members of the governing board may attend in person or by means of communications media technology used in accordance with Florida Administrative Code Chapter 28-109. Section 1002.33(9)(p)3., Florida Statutes.

B. The Rule – Section 286.011, Florida Statutes

1. Any and all meetings of charter school governing boards, except as otherwise provided in the Constitution, at which official acts are to be taken, are public meetings open to the public.
2. Applies to regular meetings, special meetings, workshops, retreats, intergovernmental meetings, and any other meeting between two or more members of the same charter school governing board.
3. Requires reasonable notice and written minutes.

C. What Does That Mean To Me?

1. One-way communication between governing board members, when it does not result in the exchange of comments or responses on a subject requiring public action, does not constitute a meeting subject to the Sunshine Law. Op. Atty' Gen. Fla. 96-35 (1996); Op. Atty's Gen. Fla. 01-20 (2001). However, circulation of position statements must not be used in place of a public meeting.
2. The use of an electronic anonymous newsletter which facilitates communication among members of a public board on matters that foreseeably may come before the public board for official action is subject to the Sunshine Law. Informal Op. Att'y Gen. Fla., October 31, 2000.
3. When two or more board members are participating in other meetings or functions unconnected with their board (*i.e.*, rotary) they must refrain from discussing matters on which foreseeable action may be taken by their board, but are not otherwise restricted in their actions. Op. Att'y Gen. Fla. 92-97 (1992). Members of a board are not prohibited from meeting together socially, provided that matters which may come before their board are not discussed. Inf. Op. to Batchelor, May 27, 1982.

C. What Does That Mean To Me? – cont'd

4. The City filed a lawsuit against members of some of its advisory boards regarding allegations of Sunshine Law violations. Members of two advisory boards became involved with neighborhood associations, and were discussing the issues of their advisory boards during closed meetings with neighborhood associations. The Court held the members of the advisory boards violated the Sunshine Law by participating in the neighborhood association meetings and discussing the issues of their advisory boards. Advisory committee members are prohibited from discussing their advisory board business among themselves outside a duly noticed public meeting. The individual members who violated the Sunshine Law were held to be responsible for reimbursing the City its attorney's fees. A newspaper article indicated the City expended more than \$325,000.00 in the case. *City of Bradenton Beach v. Metz* (12th Judicial Circuit Court 2019).
5. A series of private meetings (21) by Bert Fish Medical Center to discuss and decide upon a merger with Adventist Health System should have been held in the Sunshine. Bert Fish Foundation sued and a court determined the \$80 million merger was void. The Foundation attorneys received “just under \$1 million” as prevailing party attorney fees and Bert Fish Medical Center sued their former attorney for \$22.5 million over the failed merger. *Bert Fish Foundation v. Southeast Volusia Hospital District, et al.* (2011).

- C. What Does That Mean To Me? – cont'd
6. Meetings between a voting member of a board and a nonvoting member who serves as a member of the board in an *ex officio*, nonvoting capacity, are subject to the Sunshine Law. Op. Att’y Gen. Fla. 05-18 (2005).
 7. The Sunshine Law requirements apply once the charter contract is “effective.” Op. Att’y Gen. Fla. 01-23 (2001).
 8. Breakout groups during public meetings are prohibited. A school attendance advisory committee was formed and during the first few meetings breakout sessions were held where committee members separated into two tables, one for high school and one for middle school. The Court found the practice of dividing committees into breakout groups violates the openness requirement of the Sunshine Law. Committee members could not hear what members at other tables said, and members of the public could not hear what was being discussed at each table. Due to the Sunshine Law violation, the decision made by the School Board based on the advisory committee work was void. *Linares v. Pasco School Board* (6th Judicial Circuit Court 2018).

D. Penalties for Non-Compliance

1. Non-criminal infraction – fine not exceeding \$500.00. Section 286.011(3)(a), Florida Statutes.
2. Criminal infraction – if knowingly violate the Sunshine Law, guilty of a second degree misdemeanor. Section 286.011(3)(b), Florida Statutes.
 - a. Imprisoned up to 60 days.
 - b. Monetary fine not exceeding \$500.00.
3. The official action taken in violation of the Sunshine Law could be invalidated in a civil lawsuit.

QUESTIONS