

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

FLORIDA

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# FLORIDA

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## FLORIDA

**SIXTH EDITION  
2011**

Previously Titled  
Tapping Officials' Secrets

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## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



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**FOREWORD**

Florida has the most expansive open government laws in the country. Open government law has proceeded on three different, but related, tracks: statutory public records, statutory public meetings, and judicial access decisional law. Florida public records law is codified at Fla. Stat. §§ 119.01 to 119.15 (1995). The open meeting statute is commonly called the Florida Sunshine Law, and is codified at Fla. Stat. §§ 286.011 to 286.012 (1991). Both open government statutes have been broadly construed by the judiciary and the Florida attorney general's office, and reflect a comprehensive policy of open government. Access to judicial records and proceedings has similarly been broadly granted by Florida courts.

*Open Records*

The Florida Public Records Law unequivocally states, "it is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Fla. Stat. § 119.01(1) (1995). The statute expansively defines "public record" to include all "documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of 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." Fla. Stat. § 119.011(1) (1995). With equal breadth, the law defines "agency" as "any state, county district, authority, or municipal officer, department division, board, bureau, commission, or other separate unit of government created or established by law . . . and any other public or private agency, partnership, corporation, or business entity acting on behalf of any public agency." Fla. Stat. § 119.001(2) (1995).

A "public record" of an agency is subject to a broad legislated public right of inspection. Section 119.07(1)(a) provides that "[e]very person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The

custodian shall furnish a copy or a certified copy of the record upon payment of the prece prescribed by law. . . ."

The Florida Supreme Court has held that only statutory exemptions from the inspections provision of Chapter 119 may be recognized, *Wait v. Fla. Power & Light*, 372 So. 2d 420 (Fla. 1979); although courts must give effect to competing constitutional rights where inspection would otherwise compromise them. *Fla. Freedom Newspapers v. McCrary*, 497 So. 2d 652 (Fla. 1st DCA 1986).

The exact number of statutory exemptions to the open records law is difficult to assess but estimates exceed 200; 13 *Fla. St. U. L. Rev.* 705 (1985). In response to criticisms that Florida's public records law has been undermined by the many exemptions, the Florida Legislature enacted the Open Government Sunset Review Act of 1995. Fla. Stat. § 119.15. This "Sunset" law provides for the periodic repeal of all exemptions, and mandates periodic review of the specific criteria which should be considered when reviewing the exemptions. Unless the legislative review demonstrates a compelling interest in retaining a particular exemption, and the legislature reenacts the exemption, it is automatically repealed.

The 1995 Sunshine Review Act incorporates the provisions of Section 119.15 as the criteria by which legislators should review Sunshine Law exemptions. Fla. Stat. § 286.0111. Under the 1995 Act, an exemption must fit within one of three categories of identifiable public purposes, and must be seen as compelling enough to override the strong presumption of openness articulated in Fla. Stat. § 119.15(2).

Since the Sunshine Review Act, the legislature has exhibited a resolve to streamline exemptions, allowing confidentiality only to the extent necessary to protect important competing values.

*Open Meetings*

Florida's Government in the Sunshine Law, passed in 1967, requires that all meetings of any state, county, or municipal board or commission be open to the public, and mandates that any official action taken at the closed meeting not be binding. Fla. Stat. § 286.011 (1995). "Meeting is construed broadly, and is not confined to "formal" assemblages at which a ritualistic vote takes place. *Times Publ'g Co. v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969). The legislature intended to make open the entire decision-making process by the enactment of the Sunshine Law.

Exemptions to the Sunshine Law are not nearly as numerous as exemptions to the public records law. The Sunshine Review Act also applies to the open meeting statute; thus, exemptions to open meeting requirements are reviewed in the same manner as discussed above in reference to open records exemptions. Fla. Stat. § 286.0111 (1995).

# Open Records

## I. STATUTE — BASIC APPLICATION

### A. Who can request records?

#### 1. Status of requestor.

Fla. Stat. § 119.01(1) (1995) provides that “it is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any *person*.” Person includes “individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.” Fla. Stat. § 1.01(3) (1995). There is no distinction between citizens and non-citizens as far as access to public records is concerned, and a former citizenship requirement was deleted from law in 1975. *Cf.* Op. Att’y Gen. Fla. 75-175 (1975).

#### 2. Purpose of request.

Florida does not require requesters to demonstrate a special or legitimate interest in a document in order to secure the right of inspection under Chapter 119. Thus, mere curiosity or even blatant commercial interest do not vest in either the courts or the records custodian discretion to deny inspection. *See, e.g., State ex rel. Davidson v. Couch*, 156 So. 297 (Fla. 1934) (one does not have to be a taxpayer or have a “special interest” in public documents to inspect them); *Bevan v. Wanicka*, 505 So. 2d 116 (Fla. 2d DCA 1987) (public records law does not condition inspection on requirement that person disclose background information about himself); *Lorei v. Smith*, 464 So. 2d 1330 (Fla. 2d DCA), *review denied*, 475 So. 2d 695 (Fla. 1985) (purpose of request for access is immaterial and breadth of right to access is virtually unfettered); *News-Press Publ’g. Co. Inc. v. Gadd*, 388 So. 2d 276 (Fla. 2d DCA 1980), *appeal after remand*, 412 So. 2d 894, *review denied*, 419 So. 2d 1197; *Warden v. Bennett*, 340 So. 2d 977, 979 (Fla. 2d DCA 1976); *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935).

#### 3. Use of records.

The use to which a person intends to put the documents once copies are received similarly is irrelevant in determining whether a person has a right of access under Chapter 119. *State ex rel. Davidson*, 156 So. at 299; *see also State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905).

### B. Whose records are and are not subject to the act?

Article I, section 24(a) of the Florida Constitution specifically includes the legislative, executive, and judicial branches of government within the scope of “the right to inspect or copy any public record made or received in connection with the official business of any public officer, or employee of the state, or persons acting on their behalf . . . .”

#### 1. Executive branch.

Public records subject to public inspection generally include executive records. *Amos v. Gunn*, 94 So. 615 (Fla. 1922). The public records law expressly provides “that the public has a right to have access to executive branch governmental meetings and records. . . .” Fla. Stat. § 119.15(2) (1995). The public records law applies to executive personnel and bodies at all governmental levels. *See* Fla. Stat. § 119.011(2) (1995) (defining agency); *see also* Op Att’y Gen. Fla. 87-141 (1987) (copies of documents received by the mayor of a municipality in his official capacity are public records).

However, in addition to specified statutory exemptions, there are limited non-statutory limitations on the right of access to executive branch records concerning constitutionally confidential functions. For example, where the Parole and Probation Commission is directed by the Governor, pursuant to the Rules of Executive Clemency, to investigate, report and make recommendations regarding an application for clemency and is acting on behalf of the executive under the

constitutionally derived pardon power rather than the commission’s own statutory parole authority, the materials gathered in the course of carrying out the executive directive may not be subject to the legislative mandate of Chapter 119. Such procedures fall within the ambit of the clemency power which is vested solely in the executive pursuant to Fla. Const. art. IV, sec. 8. Op. Att’y Gen. Fla. 86-50 (1986).

The Florida legislature has created several statutory exemptions relating to specified records of the executive branch. *See, e.g.,* Fla. Stat. § 27.151(1) (1995) (exempting an executive order and related reports assigning or exchanging state attorneys).

#### 2. Legislative bodies.

Unless the legislature promulgates a contrary legislative rule, the public records law applies to records made or received in connection with official business by legislators. *See* Op. Att’y Gen. Fla. 75-282 (1975) (in the absence of a House or Senate rule to the contrary, Chapter 119 applies to legislative records); Op. Att’y Gen. Fla. 72-416 (1972) (the Legislature may provide by rule for the confidentiality of a report of a special master appointed by the Senate to conduct a suspension hearing until such time as the Senate meets to debate the suspension).

In addition, various statutory exemptions apply to legislative records. *See* Fla. Stat. § 15.07 (1995) (exempting the journal of the executive session of the Senate from disclosure except upon order of the Senate itself or some court of competent jurisdiction); Fla. Stat. § 11.26(1)(2) (1995) (legislative employees forbidden from revealing the contents of any requests for services made by member of legislature).

#### 3. Courts.

Under the doctrine of separation of powers the Supreme Court is vested with the power to adopt rules for practice and procedure in all courts. Fla. Const. art. V, § 2(a). In general, therefore, challenges to the scope and limitations of judicial discretion in ordering records to be sealed following filing do not arise under Chapter 119, but through constitutional guarantees relating to open and public judicial proceedings, and freedom of the press. *See, e.g., Times Publ’g v. Ake*, 660 So. 2d 255 (Fla. 1995); *In re Amendments to Rule of Judicial Admin. 2.051—Public Access to Judicial Records*, 651 So. 2d 1185 (Fla. 1995); *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992); *Barron v. Fla. Freedom Newspapers*, 531 So. 2d 113 (Fla. 1988); *Petition of Post-Newsweek Stations, Fla. Inc.*, 370 So. 2d 764 (Fla. 1979); *English v. McCrary*, 348 So. 2d 293 (Fla. 1977); *State ex rel. Miami Herald Publ’g Co. v. McIntosh*, 340 So. 2d 904 (Fla. 1976); *State ex rel. Times Publ’g Co. v. Patterson*, 451 So. 2d 888 (Fla. 2d DCA 1984); *Palm Beach Newspapers Inc. v. Nourse*, 413 So. 2d 467 (Fla. 4th DCA 1982); *Miami Herald Publ’g Co. v. Lewis*, 383 So. 2d 236 (Fla. 4th DCA 1980); *Sentinel Star Co. v. Booth*, 372 So. 2d 100 (Fla. 2d DCA 1979); *Tallahassee Democrat. Inc. v. Willis*, 370 So. 2d 867 (Fla. 1st DCA 1979); *Miami Herald Publ’g Co. v. Collazo*, 329 So. 2d 333 (Fla. 3d DCA 1976), *cert. denied*, 342 So. 2d 1100 (Fla. 1977).

There is a strong presumption of openness in all criminal and civil judicial proceedings. *See Barron v. Fla. Freedom Newspapers*, 531 So. 2d 113 (Fla. 1988). In *State v. Bundy*, 455 So. 2d 330 (Fla. 1984), the Supreme Court articulated a three part test which must be met by the party seeking to seal a court record in a criminal proceeding: (1) that closure is necessary to prevent a serious and imminent threat to the administration of justice; (2) that no alternative measure is available, other than a change of venue, to protect the defendant’s right to a fair trial; and (3) that closure would be effective in protecting the rights of the accused without being broader than necessary to accomplish this purpose. The burden is on the party seeking closure. *See, e.g., Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000); *Fla. Freedom Newspapers Inc. v. McCrary*, 520 So. 2d 32 (Fla. 1988). *Compare Ocala Star-Banner v. State*, 697 So. 2d 1317 (Fla. 5th DCA 1997) (newspaper’s motion to access sealed public health records denied because newspaper failed to demonstrate good cause to unseal records). The media has a right to be heard and present evidence at a closure hearing. *See WESH Television Inc. v. Freeman*, 691 So. 2d 532 (Fla. 5th DCA 1997).

In *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 118 (Fla. 1988), the Florida Supreme Court held that closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed. Furthermore, before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose. *Id.*

Grand Jury documents are made confidential pursuant to section 905.24, Fla. Stat. (1995). *Buchanan v. Miami Herald Publ'g Co.*, 206 So. 2d 465 (Fla. 3d DCA 1968), *aff'd*, 230 So. 2d 9 (Fla. 1969) (proceedings before a grand jury are “absolutely privileged”). Accordingly, communications addressed to that body during the regular performance of its duties are not subject to Chapter 119. However, the name of a grand jury foreperson may be released to the public and may not be redacted from the record after it is released. Op. Att’y Gen., 99-09 (1999).

#### 4. Nongovernmental bodies.

##### a. Bodies receiving public funds or benefits.

The public records law may apply to nongovernmental bodies, such as charitable organizations or firms contracting with the government, which receive public funds or benefits. The relevant inquiry is whether such nongovernmental body is “acting on behalf of any public agency.” Fla. Stat. § 119.011(2) (1995); *B & S Utils., Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17, 22-23 (Fla. 1st DCA 2008) (holding that private engineering firm’s records regarding projects on which it worked as “the *de facto* city engineer are public records” and thus subject to disclosure under chapter 119 because the city delegated a governmental function to the private firm). However, application of Chapter 119 to agencies receiving public funds is limited and this factor alone is not dispositive. *Sarasota Herald-Tribune Co. v. Community Health Corp.*, 582 So. 2d 730 (Fla. 2d DCA 1991). Courts look to the “totality of factors” which indicate a significant level of involvement by the public agency. For example, application to firms only partially funded by such funds may be limited to materials made or received by the private agency in the course of its contract with the agency. *New York Times Co. v. PHH Mental Health Servs. Inc.*, 616 So. 2d 27 (Fla. 1993) (totality of factors analysis involves consideration of (1) Creation (did the public agency plan any part in the creation of the private entity); (2) Funding (has the public agency provided substantial funds, capital or credit to the private entity); (3) Regulation (does the public agency regulate or otherwise control the private entity’s professional activity or judgment); (4) Decision-making Process (does the private entity play an integral part in the public agency’s decision-making process); (5) Government Function (is the private entity exercising a governmental function, and (6) Goals (is the goal of the private entity to help the public agency and the citizens served by the agency)); *Mem’l Hosp.-West Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 1999), *reb’g denied*, (records of private organization operating public hospital under lease agreement with hospital taxing authority is subject to disclosure statutes); *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (agency may not transfer records to attorney to avoid disclosure requirements); *Putnam Cnty. Humane Soc’y Inc. v. Woodward*, 740 So. 2d 1238 (Fla. 5th DCA 1999) (humane society is an agency of the state authorized under enabling statutes to conduct animal abuse investigations and is subject to public records laws); *Stanfield v. Salvation Army*, 740 So. 2d 1238 (Fla. 5th DCA 1999) (records of private company made public when company provided services in place of county); *Prison Health Servs. Inc. v. Lakeland Ledger Publ’g Co.*, 718 So. 2d 204 (Fla. 2d DCA 1998), *reb’g denied*, 727 So. 2d 912 (provider of prisoner health care under contract with county sheriff is required to comply with records request); *Harold v. Orange County*, 668 So. 2d 1010 (Fla. 5th DCA 1996)(records of

construction manager which it was “required to compile, maintain, and disclose to the County pursuant to its contract with the County” were public records); *News & Sun Sentinel Co. v. Schwab, et al.*, 596 So. 2d 1029 (Fla. 1992) (architecture firm not acting on behalf of agency by merely providing professional services); *Cape Coral Med. Ctr. Inc. v. News-Press Publ’g Co. Inc.*, 390 So. 2d 1216 (Fla. 2d DCA 1980) (non-profit private lessee of governmental lessor is subject to Chapter 119); *Fritz v. Norflor Constr. Co.*, 386 So. 2d 899 (Fla. 2d DCA 1980) (an engineering corporation is an “agency” within the meaning of section 119.011, requiring the disclosure of public records, insofar as the corporation performs services for the city). *Compare Parsons & Whittemore Inc. v. Metro. Dade Cnty.*, 429 So. 2d 343 (Fla. 3d DCA 1983) (merely by acting as a “Turn Key” with a governmental agency a corporation does not act “on behalf of” the agency within the meaning of section 119 during construction of the facility); *News-Press Publ’g Co. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987) (physician performing physical examination under contract with fire department is not an “agency,” and reports relating to department personnel are not subject to disclosure); *Campus Commc’ns Inc. v. Shands Teaching Hosp. & Clinics Inc.*, 512 So. 2d 999 (Fla. 1st DCA 1987) (teaching hospital not a public agency or authority). Application of the “totality of factors” tests, requires a review of the statutory authority under which the entity purports to act (i.e., what function is the entity performing).

##### b. Bodies whose members include governmental officials.

If public funds are expended by an agency in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group or organization, then the records pertaining to such agency are subject to section 119.07. Op. Att’y Gen. Fla. 74-35 (1974). Even where public funds are not spent on membership dues in non-governmental groups, if an official’s membership in such group is “in connection with the transaction of official business by an agency,” then the records of the group will be subject to inspection. Fla. Stat. § 119(1)(2) (1995). *News & Sun-Sentinel Co. v. Modesitt*, 466 So. 2d 1164 (Fla. 1st DCA), *pet. for review denied*, 476 So. 2d 674 (Fla. 1985) (records relating to the use of funds of a group of private citizens in organizing and conducting foreign mission tours were not public records where the Commissioner of Agriculture merely acted as custodian of the funds and did not use the funds for any of the Commissioner’s official, quasi-official, or political activities).

#### 5. Multi-state or regional bodies.

There is no Florida law addressing the applicability of Chapter 119 to multistate or regional bodies. To the extent that there is no choice of law, it could be argued that such bodies are subject to the open record provision, if such a body “acts on behalf” of a Florida public agency within the meaning of Chapter 119.

#### 6. Advisory boards and commissions, quasi-governmental entities.

In response to *State ex rel. Tindel v. Sharp*, 300 So. 2d 750 (Fla. 1st DCA 1974), *cert. denied*, 310 So. 2d 745 (Fla. 1975), which held that a screening committee, hired to screen school superintendent applications, was an “independent contractor” and therefore not within the scope of Chapter 119, the Legislature amended the definition of “agency” found at section 119.011(2) to include “any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency.” (emphasis added). Under the revised definition of agency, records of advisory bodies, agents, or independent contractors, public or private, may be subject to Chapter 119 depending on the totality of the factors analysis noted above. Op. Att’y Gen. Fla. 91-99 (1991) (private nonprofit corporation, leasing hospital facilities of public hospital, requires management records of hospital to be public records); Op. Att’y Gen. Fla. 89-52 (1985) (public records status dependent upon the powers and duties imposed upon non-for-profit corporation under lease agreement); Op. Att’y Gen. Fla. 92-037 (1992) (Tampa Bay Performing Arts Center found subject to Chapter 119, because Trustees were government officials, it utilized

city property and performed a government function); *Op. Att’y Gen. Fla. 92-53* (1992) (Ringling Brothers Museum of Art Foundation was a private entity acting on behalf of public agency; thus records relating to foundation’s activities were public records); *Times Publ’g Co. v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990) (White Sox baseball organization subject to Chapter 119 for lease documents and other records relating to negotiations for use of municipal stadium); *Shevin v. Byron, Harless, Schaffer, Reid & Ass’ns Inc.*, 379 So. 2d 633 (Fla. 1980) (applying Chapter 119 to a consultant hired by electric authority); *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974) (groups, public or private, which act in any advisory capacity to a public board or commission are subject to the Sunshine Law); *Schwartzman v. Merritt Island Volunteer Fire Dep’t*, 352 So. 2d 1230 (Fla. 4th DCA 1977) (because it acts on behalf of a public agency a volunteer fire department is an agency and its records are public records).

## C. What records are and are not subject to the act?

### 1. What kind of records are covered?

Only “public records” are covered by Chapter 119, but Section 119.011(1) broadly defines public records as:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form or 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.

The Florida Supreme Court, in *Shevin v. Byron, Harless, Schaffer, Reid & Associates Inc.*, *supra*, 379 So. 2d at 640, construed the foregoing definition of public records to include “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.” See also *Booksmart Enters. Inc. v. Barnes & Noble Coll. Bookstores, Inc.*, 718 So. 2d 227 (Fla. 3d DCA 1998), *reh’g denied*, *review denied*, 729 So. 2d 389 (book forms supplied by on-campus bookstore and completed by university instructors for university business purposes are public records); *Hill v. Prudential Ins. Co. of Am.*, 701 So. 2d 1218 (Fla. 1st DCA 1997) (documents related to state conducted investigation of insurance statute violations are public records). To be contrasted with “public records” are those materials prepared as drafts or notes which “constitute mere precursors of governmental ‘records’ and are not, in themselves, intended as final evidence of the knowledge to be recorded.” *Shevin*, 379 So. 2d at 640. As examples of those materials which would not be public records, the *Byron, Harless* Court referred to rough drafts, notes to be used in preparing some other documentary material, and tapes or notes taken by a secretary as dictation. Thus, under the particular facts presented in the case, the court determined that the handwritten notes of a consultant’s impressions made during or shortly after interviews were not public records.

The *Byron, Harless* Court did not, however, create a blanket exception to the public records law for any document labeled as a “draft” or “notes” or otherwise designated as other than a final copy. The Court noted:

Inter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency’s later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business.

*Id.* at 640; see also *Nicolai v. Baldwin*, 715 So. 2d 1161 (Fla. 5th DCA 1998) (internal auditor’s report draft delivered to County Administrator does not subject the report to disclosure as the draft was not a final report and it was not delivered to a “unit of government”); *Times Publ’g Co. v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990); *Roberts v. Butterworth*, 668 So. 2d 580 (Fla. 1996) (attorney’s “handwritten notes were either not public records or were exempt”); *Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988) (order restricting inspection of state attorney’s file for change which had been roll-

pressed was overbroad because it prohibited disclosure of interoffice memoranda which communicated information between public employees; preliminary notes prepared by agency attorneys and intended for attorney’s own personal use not public records).

Thus, if the purpose of the document is to perpetuate, communicate, or formalize knowledge, it is a public record notwithstanding that it is not in final form or the ultimate product of the public official or agency. See, e.g., *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915, 917-18 (Fla. 3d DCA 2007) (holding that memorandum created by city commissioner was public record subject to disclosure because commissioner was an agency for purposes of chapter 119, the memorandum discussed a meeting that the commissioner attended in his official capacity, the meeting pertained to official city business, it perpetuated his final knowledge of the meeting and contained factual information about the meeting, as opposed to his mental impressions); *Orange Cnty. v. Fla. Land Co.*, 450 So. 2d 341 (Fla. 5th DCA), *petition for review denied*, 458 So. 2d 273 (Fla. 1984) (draft notes prepared by public agency’s attorneys for their own personal use are not public records but the trial preparation materials in the nature of inter-office and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not part of the agency’s formal public conduct, are public records subject to disclosure; see, however, the new exemption for public attorney work product § 119.07(3)(b)(n)); *Times Publ’g Co. v. City of Clearwater*, 830 So. 2d 844 (Fla. 2d DCA 2002) (personal e-mail sent from or received by city employees using government owned computers fall outside the definition of public record); *State v. Kokal*, 562 So. 2d 324 (Fla. 1990) (not all trial preparation materials of agency attorneys are public records; state attorney not required to disclose certain trial preparation documents described as preliminary guides intended to aid attorneys); *Hillsborough Cnty. Aviation Auth. v. Azzarelli Constr. Co.*, 436 So. 2d 153 (Fla. 2d DCA 1983) (rejection of claim that when a public body is engaged in litigation, the pleadings and evidence presented in court constitute the formal agency statement on the subject matter and all else is merely preliminary or preparatory and therefore not a Chapter 119 public record); *Bay Cnty. Sch. Bd. v. Pub. Emps. Relations Comm’n*, 382 So. 2d 747 (Fla. 1st DCA 1980) (school board budget work sheets are materials prepared in connection with official agency business and tend to perpetuate, communicate or formalize knowledge of some type and thus are public records); *Justice Coal. v. First Dist. Court of Appeal Nominating Comm’n*, 823 So. 2d 185 (Fla. 1st DCA 2002) (notes created by members of Nominating Commission while interviewing judicial candidates were not public records); *State ex rel. Copeland v. Cartwright*, 38 Fla. Supp. 6 (17th Cir. Broward Co. 1971), *aff’d*, 282 So. 2d 45 (Fla. 4th DCA 1973) (site plan review prepared for a public building project, even though it was a preliminary working paper, must be open for public inspection). *Cf. State v. Buenoano*, 707 So. 2d 714 (Fla. 1998) (to prevent the chill of sharing information between the federal and state governments, federal records, designated by the federal government to not be public records and mistakenly sent by State Attorney to trial court, are not public records). All records received by a public agency are open to public inspection, regardless of the expectations of the source of the material, unless exempted by statute or constitutional provisions; *Gadd v. News-Press Publ’g Co.*, 412 So. 2d 894 (Fla. 2d DCA 1982) (records of a utilization review committee of a county hospital are not exempt from Chapter 119, although the information may come from sources who expect or have been promised confidentiality); *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981) (disclosure of grievance records of a public school teacher could not be avoided notwithstanding a provision of a bargaining agreement with the teachers’ association mandating that such matter be kept confidential); *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city could not refuse disclosure of employee names on basis of a “self-imposed” exemption).

### 2. What physical form of records are covered?

The issue of access to public records maintained on a computer was addressed by the Fourth District Court of Appeal in *Seigle v. Barry*, 422 So. 2d 63 (Fla. 4th DCA 1982), *petition for review denied*, 431 So.

2d 988 (Fla. 1983). The court adopted the rule that access to computerized records shall be given through the use of programs currently in use by the public official responsible for maintaining the public records. The Florida Legislature later amended Section 119.011(1) to expressly include software and computer data, regardless of the means of transmission. See also Op. Att’y Gen. Fla. 96-34 (1996) (official business related e-mails sent or received by employees of government office are public records). Furthermore, the *Seigle* court found that all of the information in a computer, not merely that which a particular program accesses, should be available for inspection and copying. See also Op. Att’y Gen. Fla. 85-3 (1985) (Games & Fresh Water Commission has duty to permit inspection of public records, including information on computer tapes). The Legislature later amended Section 119.07(3)(b)(q) to exempt computer software obtained under a licensing agreement.

The *Seigle* court also found that access by use of a specially designed program prepared by or at the expense of the person requesting the information may be permitted in the discretion of the custodian of the records. If, however, the custodian refuses to permit access in this manner, the court may permit access where:

- 1) the available programs do not access all of the public records stored in the computer’s data banks;
- 2) the information in the computer accessible by use of the available programs would include exempt information which would necessitate a special program to delete such exempt items;
- 3) for such reasons the form in which the information is proffered does not fairly and meaningfully represent the records; or
- 4) the court determines that other exceptional circumstances exist warranting this special remedy.

Examples of other materials which have been found to constitute public records:

Telephone records of calls made from agency telephones. *Gillum v. Times Publ’g Co.*, No. 91-2689 CA (6th Cir. Dade County July, 1991); Op. Att’y Gen. Fla. 99-74 (1999).

Videotaped training film prepared by state attorney’s office. Op. Att’y Gen. Fla. 88-23.

Email messages made or received by agency employees in connection with official business. Op. Att’y Gen. Fla. 96-34 (1996).

### 3. Are certain records available for inspection but not copying?

The statutory right of inspection of public records includes the right to make copies. Fla. Stat. § 119.07(1)(a)(1991). See *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420, 425 (Fla. 1979); *Winter v. Playa del Sol Inc.*, 353 So. 2d 598 (Fla. 4th DCA 1977); *Fuller v. State ex. rel. O’Donnell*, 17 So. 2d 607 (Fla. 1944). An exception to the right of duplication applies where an agency has a copyrighted work in its possession, in which case the public has access to such works but no right to have such works reproduced. *Yeste v. Miami Herald Publ’g Co.*, 451 So. 2d 491 (Fla. 3d DCA 1984); Op. Att’y Gen. Fla. 82-63 (1982).

## D. Fee provisions or practices.

### 1. Levels or limitations on fees.

Permissible fees for copying are limited to the actual costs of duplication, unless fees are prescribed by law, or, if a fee is not prescribed by law, not more than 15 cents for copies not larger than 14 inches by 8 1/2 inches. Fla. Stat. § 119.07(1)(a) (1991); see also *State ex. rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905) (a charge may not be levied simply because a person exerts his right to inspect and copy public records); *Carden v. Chief of Police, City of Clewiston Police Dep’t*, 696 So. 2d 772 (Fla. 2d. DCA 1996) (special service charges for researching and copying public records must not be unreasonable or excessive); *WFTV Inc. v. Wilken*, 675 So. 2d.674 (Fla. 4th DCA 1996) (\$1 per copy fee

permitted under statutory schedule); Op. Att’y Gen. Fla. Op. 85-3 (providing access to public records is a statutory duty imposed upon all record custodians and should not be considered a revenue-generating operation). Section 119.07(1)(a) defines “actual cost of duplication” to mean “the cost of materials and supplies used to duplicate the record but it does not include the labor costs or overhead costs associated with such duplication.”

A fee in the form of a special service charge is permitted for inspection and copying where the nature of the public records is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency. Fla. Stat. § 119.07(1)(b) (1995). The public records law incorporates the definition of “information technology resources” from Fla. Stat. section 282.303(9) (1995), which includes data processing hardware and software and services, supplies, personnel, facility resources, maintenance and training, or other related resources. Such fee must be reasonable and based on actual costs incurred by the agency. Fla. Stat. § 119.07(1)(b) (1995); see also Op. Att’y Gen. Fla. 86-69 (1986) (charges for extensive use of information technology or extensive supervisory assistance may not be routinely imposed, and in the absence of such extensive use of information, technology resources or supervisory assistance, a municipal police department may charge only the actual costs of duplication for furnishing copies of accident reports); Op. Att’y Gen. Fla. 84-81 (1984) (imposition of a service charge for inspection of records is not justified merely because a record contains exempted material; rather, extensive supervisory assistance must be involved). Fees for copies of judicial records are not controlled by Chapter 119. *WFTV v. Wilken*, 21 Fla. L. Weekly D1412 (Fla. 4th DCA 1996).

## 2. Particular fee specifications or provisions.

### a. Search.

Such items as “search or exploration” fees, employee time fees, fees imposed for ordinary wear and tear on machinery and the like may not be charged and collected by record custodians as a condition of inspection in the absence of specific statutory authorization. See I.D.1, *supra*. Compare Fla. Stat. §§ 15.09, 15.091, 28.24, 382.025 (1991) (imposing fees for searching certain public records); *Bd. of Cnty. Comm’rs of Highlands Cnty. v. Colby*, 976 So. 2d 31, 37 (Fla. 2d DCA 2008) (holding that service charge formula used to calculate fee for requests to inspect and/or copy public records that involve extensive research can include employee’s salary and benefits).

### b. Duplication.

Record custodians must furnish copies of records, certified or otherwise, upon the payment of the actual cost of the duplication in the event specific fees are not prescribed by law. Fla. Stat. § 119.07(1)(a) (1995). See discussion, *supra*, I.D.1. Even criminal defendants seeking postconviction relief are required to pay for copies of documents to be used in the preparation of motions for postconviction relief. *Clowers v. State*, 960 So. 2d 840, 841 (Fla. 3d DCA 2007) (holding that indigent criminal defendant was required to pay State for copies of documents to be used in preparation of motion for postconviction relief because, even though an “indigent prisoner may obtain free copies for plenary appeal, there is no such provision to obtain them afterward” and sections 119.07(1)(a) and (4) require payment for copies); *Woodfaulk v. State*, 935 So. 2d 1225, 1227 (Fla. 5th DCA 2006) (same).

### c. Other.

*Computer Access.* The public records law does not contain a special fee provision governing computer access to public records. As with other public records, in the absence of statutory authorization, a charge may not be imposed for the mere inspection of public records. See Op. Att’y Gen. Fla. 84-3 (1984); Op. Att’y Gen. Fla. 76-34 (1976). However, as discussed *supra* at I.D.1, an agency may charge a reasonable special service charge for the use of information technology resources based on the cost incurred for extensive use of information technology resources or extensive use of clerical and supervisory assistance.

### 3. Provisions for fee waivers.

Not addressed.

### 4. Requirements or prohibitions regarding advance payment.

In *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31, 37 (Fla. 2d DCA 2008), the court held that a county can require a deposit prior to beginning research into a public records request as long as “it is reasonable and based on the labor cost that is actually incurred by or attributable to the County.” See also *Lozman v. City of Riviera Beach*, 995 So. 2d 1027, 1028 (Fla. 4th DCA 2008) (discussing *Cobby* and holding that section 119.07(4) does not require adoption of a formal policy of requiring advance deposit).

### 5. Have agencies imposed prohibitive fees to discourage requesters?

Not addressed.

## E. Who enforces the act?

Florida courts have not addressed the issue of who may sue to enforce rights under Chapter 119.

### 1. Attorney General’s role.

The Florida Legislature has created a Voluntary Mediation Program within the Attorney General’s Office to mediate disputes involving access to public records. See Fla. Stat. § 16.60 (2000). The Attorney General’s Office is required to employ mediators to mediate such disputes, recommend to the Legislature needed legislating regarding access to public records, and assist the Department of State in preparing training seminars record public records access. See Fla. Stat. § 16.60(3).

### 2. Availability of an ombudsman.

The Florida Legislature has created a Voluntary Mediation Program within the Attorney General’s Office to mediate disputes involving access to public records. See Fla. Stat. § 16.60 (2000).

### 3. Commission or agency enforcement.

In 2007, the Governor created the Office of Open Government, intended to ensure compliance with the state’s open government and public records laws. Fla. Exec. Order No. 07-01 (2007). The Order directed each agency to designate a person to act as the agency’s “public records/open government contact person,” who would be responsible for complying with open government and public records requests. See *id.*

## F. Are there sanctions for noncompliance?

The primary remedy available when a successful action is brought pursuant to Chapter 119 is a writ of mandamus requiring the agency to open its records for inspection. Fla. Stat. § 119.11(1) (1995); see also *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). No other sanctions are addressed.

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open records statute.

#### 1. Character of exemptions.

Generally, every person has the right to inspect records created or received in relation to official business of State legislative, executive, or judicial branches. However, the legislature may specifically exempt certain records from public access. The legislature must include in the exemption law the “public necessity justifying the exemption” and construct the restriction so that it “shall be no broader than necessary to accomplish the stated purpose of the law.” Art. I, § 24(c), Fla. Const. (1993); see also *Halifax Hosp. Med. Ctr. v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (exemption section 286.011, Fla. State

(1995) denying public access to transcripts generated at a public hospital board meeting found overly broad and unconstitutional on its face).

#### a. General or specific?

Exemptions from the inspection provisions of Chapter 119 must be specifically provided for by statute. *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420 (Fla. 1979); see also *Greater Orlando Aviation Auth. v. Nejame, LaFay, Jancha, Vara, Barker*, 4 So. 3d 41, 43 (Fla. 5th DCA 2009) (“Courts are not authorized to create exemptions from disclosure or to read into laws exemptions not clearly created by Congress or by the State Legislature.”) (quoting *Housing Auth. of Daytona Beach v. Gomialion*, 639 So. 2d 117, 121 (Fla. 5th DCA 1994)); *Miami Herald Publ’g Co. v. City of N. Miami*, 452 So. 2d 572 (Fla. 3d DCA 1984), approved, 468 So. 2d 218 (only public records provided by statute to be confidential or which are expressly exempt by general or special law from disclosure under the public records law are exempt); *Douglas v. Michel*, 410 S.W.2d 936 (Fla. 5th DCA 1982), answering certified questions, 464 So. 2d 545 (Fla. 1985); *News-Press Publ’g Co. v. Gadd*, 388 So. 2d 226 (Fla. 2d DCA 1980) (all documents falling within the scope of the public records law are subject to disclosure unless specifically exempt by statute; court may not consider public policy questions regarding relative significance of public interest in disclosure and damage resulting from such disclosure).

#### b. Mandatory or discretionary?

Provisions exempting specified categories of records from the requirements of Section 119.07(1) do not specify whether such exemptions are mandatory or discretionary. However the public records law is to be liberally construed in favor of open government, and exemptions are to be construed narrowly so they are limited to their stated purpose. See *City of Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19 (Fla. 2d DCA 1998), *reh’g denied*; *Christy v. Palm Beach Cnty. Sheriff’s Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997); *Gillim v. Tribune Co.*, 503 So. 2d 327 (Fla. 1987); *Seminole Cnty. v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987); *Tribune Co. v. Pub. Records*, 493 So. 2d 480 (Fla. 2d DCA 1986), *review denied*; *Bludworth v. Palm Beach Newspapers Inc.*, 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986); *Miami Herald Publ’g Co. v. City of N. Miami*, 452 So. 2d 572 (Fla. 3d DCA 1984), approved, 468 So. 2d 218 (Fla. 1985). There is a difference between records which are exempt from inspection and those which are made confidential by statute. Op. Att’y Gen. Fla. 89-12; Op. Att’y Gen. Fla. 85-62. If records are simply exempt, an agency is not prohibited from disclosing records in all circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

Where the purpose of an exemption is to protect an individual or a class of individuals, and the statutory language includes the term “shall,” the exemption is likely to be regarded as mandatory. However, in light of the presumption of openness of public records, a custodian may have discretion to make available otherwise exempt records where the reason for the exemption is not present and it is in the interest of the public that the records be made available.

Pursuant to Section 119.07(2)(a), when an exemption applies to a requested record, the person who has custody is to “delete or excise from the record only that portion of the record with respect to which an exemption is asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination.”

#### c. Patterned after federal Freedom of Information Act?

No.

#### 2. Discussion of each exemption.

Between 200 to 600 statutory exceptions exist to the public records law, making discussion of each one impractical. The difficulty in identifying exemptions is partially because the enactment of exemptions

has occurred over many years, often as part of larger bills. Also, because the term “exemption” had no statutory definition, no uniform language was used when exemptions were created.

Exemptions concerning categories of records of particular interest to reporters are discussed at III below. Additionally, a code section regulating a particular activity is likely to contain the provision, if any, concerning disclosure requirements relating to such activity.

With the passage of the Open Government in the Sunshine Review Act in 1984, exemptions created in the future will be easier to identify. The exemption must specifically state the section from which it is exempt (i.e., § 119.07(1) or § 286.011), Fla. Stat. § 119.15(4)(d) (1995).

The Open Government Review Act serves as a statutory review mechanism whereby the legislature periodically determines, pursuant to specified criteria, whether the public policy underlying a particular exemption continues to exist. Exemptions which are not renewed in the year scheduled for review are automatically repealed. Fla. Stat. § 119.15 (1995).

### B. Other statutory exclusions.

*Non-Statutory Privacy Rights.* No Florida constitutional right of privacy creates an exemption from Chapter 119. The 1980 Florida constitutional amendment to Article 1, sec. 23, creates a right of privacy but provides:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. *This section shall not be construed to limit the public's right of access to public records and meeting as provided by law* (emphasis supplied).

The privacy amendment does not constrain public access to information in the public domain pursuant to the public records law or Sunshine Laws. *Forsberg v. Housing Auth.*, 455 So. 2d 373 (Fla. 1984); *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981).

While there is no Florida constitutional privacy exemption from the public records law, the question of a federal constitutional right of disclosural privacy has not been definitely answered. *See Paul v. Davis*, 424 U.S. 693, *reh'g denied*, 425 U.S. 985 (1976) (no federal constitutional privacy interest exists in relation to state dissemination of nonconviction arrest data); *Fadio v. Coon*, 633 F.2d 1172, 1175 n.3 (5th Cir. 1981) (referring to *Wait, supra*, and stating that “it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy”); *Roberts v. News-Press Publ'g Co.*, 409 So. 2d 1089 (Fla. 2d DCA 1982), *petition for review denied*, 418 So. 2d 1280 (Fla. 1982) (there may be a federal constitutional right of disclosural privacy for employees in regard to personnel files); *Op. Att'y Gen. Fla. 77-125* (1977) (discussing *Paul v. Davis*).

### C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

Courts may not create common law or public policy exemptions to the Act. However, when application of the Act to specific records would violate a constitutional right, the Courts must construe that statute to permit an exemption. *Fla. Freedom Newspapers v. McCrary*, 497 So. 2d 462 (Fla. 1st DCA 1987).

### D. Are segregable portions of records containing exempt material available?

To the extent a valid exemption has been asserted and applies to part of a public record, Chapter 119 allows that portion of the record to be redacted. Fla. Stat. § 119.07(1)(d). The remainder of the record must be produced for inspection and copying. *Id.* The person who has custody of the public record shall state the basis for the exemption he or she contends applies to all or part of the record, including the statutory citation. Fla. Stat. § 119.07(1)(e).

### E. Homeland Security Measures.

Any information revealing surveillance techniques or procedures or personnel is exempt. “Security system plans” are also exempt. Such plans include “all 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; threat assessments conducted by any agency or any private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or manuals for security personnel, emergency equipment, or security training.” Building plans and blueprints of buildings, recreational facilities, entertainment venues and more are exempt if held by a government agency. Fla. Stat. § 119.071(3)(a)(1)-(6).

## III. STATE LAW ON ELECTRONIC RECORDS

### A. Can the requester choose a format for receiving records?

Generally, access to computerized records is provided through the use of programs currently in use by the public official responsible for maintaining the public records. *See Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4th DCA 1982); *see also Tampa Television, Inc. v. Clay Cnty. Sch. Bd.*, 1993 WL 204090, at \*2-3 (Fla. Cir. Ct. Feb. 11, 1993) (applying *Seigle* and stating that “[w]hile the public records act does not require [an agency] to compile lists or make special reports solely for [a requester's] benefit,” public records should be provided where they are “easily available” to the agency and “could have been produced at a minimum of time or expense”). An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium. Fla. Stat. § 119.01(2)(f). An agency has discretion to furnish electronic records in a format other than the format routinely used by the agency, but in that case the cost of converting the information shall be borne by the requester pursuant to section § 119.07(4). *See also Op. Att'y Gen. Fla. 97-39* (1997) (“[A] school district is not required to furnish its electronic public records in an electronic format other than the standard format routinely maintained by the district. However, if the district elects to provide such records in a different format, the costs of converting the information shall be borne by the requester pursuant to section 119.07(1)(b) . . . .); *Op. Att'y Gen. Fla. 06-30* (2006) (“[A] municipality may respond to a public records request requiring the production of thousands of pages of documents by composing a static webpage where the responsive public documents are posted for viewing if the requesting party agrees to pay the administrative costs, in lieu of copying the documents at a much greater cost.”).

### B. Can the requester obtain a customized search of computer databases to fit particular needs?

As explained above, access to computerized records is generally provided through the use of programs used by the agency. Access by the use of a specially designed program prepared by or at the expense of the applicant may be permitted in the discretion of the agency. *See Seigle*, 422 So. 2d at 66. If the agency refuses to permit access in this manner, the circuit court may permit such access where: (a) available programs do not access all of the public records stored in the computer's data banks; or the information in the computer accessible by the use of available programs would include exempt information necessitating a special program to delete such exempt items; or (3) for any reason the format in which the information is proffered does not fairly and meaningfully represent the records; or (4) the court determines other exceptional circumstances exist warranting this special remedy. *Id.* at 66-67.

### C. Does the existence of information in electronic format affect its openness?

The existence of information in electronic format does not affect its openness. *See Fla. Stat. § 119.011(1)* (“Public Records” means all doc-

uments, 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.* . . .”) (emphasis added); *Seigle*, 422 So. 2d at 65 (“information stored on a computer is as much a public record as a written page in a book or a tabulation in a file stored in a cabinet”).

#### D. How is e-mail treated?

E-mail is treated no differently than other public records. *See* Op. Att’y Gen. Fla. 96-34 (1996) (official business-related e-mail sent or received by agency employees is a public record); *see also* Op. Att’y Gen. Fla. 08-07 (2008) (“e-mail messages made or received by agency employees or officials in connection with official business are public records and are subject to disclosure in the absence of an exemption”); Op. Att’y Gen. Fla. 05-12 (2005) (opining that city was precluded from requiring use of a code in order for citizens to view e-mail correspondence of the city’s police and human resources departments; use of such a code is of questionable validity because it purports to dictate an additional restriction or condition on access to public records). Further, the fact that an e-mail is sent to an “undisclosed or blind recipient” does not remove such an e-mail from the realm of public records subject to disclosure. Op. Att’y Gen. Fla. 07-14 (2007) (“e-mails sent by city commissioners in connection with the transaction with official business that are intended to communicate, perpetuate or formalize knowledge of some type are public records even though such e-mails contain undisclosed or blind recipients and their e-mail addresses and are subject to disclosure in the absence of a statutory exemption”).

##### 1. Does e-mail constitute a record?

Yes. *See* Op. Att’y Gen. Fla. 96-34 (1996); Inf. Op. Att’y Gen. Fla. to Honorable Alice Monyei, June 8, 2007. In fact, Fla. Stat. § 668.6076 requires any agency or legislative entity that operates a website and uses e-mail to post the following statement on its website: “Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.” Fla. Stat. § 668.6076 (2006).

##### 2. Public matter on government e-mail or government hardware

Public matters on government e-mail or government hardware would be subject to the public records laws. *See* Part D above.

##### 3. Private matter on government e-mail or government hardware

Private or personal e-mails contained on a government computer system are not public records. In *State v. City of Clearwater*, 863 So. 2d 149, 151 (Fla. 2003), the Florida Supreme Court considered whether “personal e-mails are considered public records by virtue of their placement on a government-owned computer system.” The Court ruled that private or personal e-mails are not public records. *See id.* at 153. The Court explained that the mere placement of such e-mails on government computers cannot make them public records; rather, “the e-mails must have been prepared ‘in connection with official agency business’ and be ‘intended to perpetuate, communicate, or formalize knowledge of some type.’” *Id.* at 154 (quoting *Shevin v. Byron, Harless, Schaffer, Reid & Assocs.*, 379 So. 2d 633 (Fla. 1980)).

##### 4. Public matter on private e-mail

*See* Part D above. E-mails are treated no differently than other public records.

##### 5. Private matter on private e-mail

*See* Part D.3. above. E-mails of government employees regarding private or personal matters are not public records.

#### E. How are text messages and instant messages treated?

This issue does not appear to have been formally addressed by the

Florida courts, legislature, or Attorney General’s Office. In 2009, however, the Florida Attorney General Office’s announced that it would treat BlackBerry PIN and text messages as public records and that it was creating a “Sunshine Technology Team” to consider the open government requirements relating to electronic communications. The Office made clear, however, that its policy was not a legal determination or formal opinion. *See, e.g.*, Attorney General Bill McCollum News Release, Sept. 19, 2009; Attorney General Bill McCollum News Release, Oct. 14, 2009 (*available at* <http://www.myfloridalegal.com>).

#### F. How are social media postings and messages treated?

A city council member is subject to the public records provisions of Chapter 119 when the member “is publicly posting comments relating to city business” or his or her public duties on privately owned and operated websites or blogs. Op. Att’y Gen. Fla. 08-07 (2008). “The individual council members who create the public documents through the posted comments and emails would be responsible for ensuring that the information is maintained in accordance with the Public Records Law and the policies and retention schedule adopted by the city.” *Id.*

The Attorney General has also determined that the placement of material on a city’s Facebook page “would presumably be in furtherance of” a municipal purpose and “in connection with the transaction of official business.” Op. Att’y Gen. Fla. 09-19 (2009). Such material would presumably be subject to the public records provisions of Chapter 119, but the determination would have to be made based on the definition of “public record” in section 119.11 on a case-by-case basis. *Id.* Whether the Facebook pages of any persons who are “friends” with the City constitute public records “would depend on whether the page and the information contained therein was made or received in connection of the transaction of official business by or on behalf of a public agency.” *Id.*

#### G. How are online discussion board posts treated?

The text of permissible discussions occurring on online bulletin boards are public records, and minutes of such discussions must be promptly prepared and recorded. *See* Op. Att’y Gen. Fla. 08-65 (2008). *See also* Section III.F. above.

#### H. Computer software

##### 1. Is software public?

An agency’s software is a public record. *See* Fla. Stat. § 119.011(1). However, data processing software obtained by an agency under a licensing agreement which prohibits its disclosure and which software is a trade secret, as defined in Fla. Stat. § 812.081, and agency-produced data processing software which is sensitive are exempt. *See* Fla. Stat. § 119.07(3)(o).

##### 2. Is software and/or file metadata public?

*See* Section H.1. above regarding software. File metadata has not been addressed.

#### I. How are fees for electronic records assessed?

There is no specified fee prescribed for access to computerized public records. However, Fla. Stat. § 119.083(4) provides that fees for access to electronic records may be assessed as prescribed by Fla. Stat. § 119.07(1)(b). Under this provision, an agency may charge a reasonable special service charge based on the costs incurred for extensive use of information technology resources or extensive use of clerical and supervisory assistance. *See* Fla. Stat. § 119.07(b)(1); *see also* Op. Att’y Gen. 97-39 (1997).

#### J. Money-making schemes.

##### 1. Revenues.

An agency may sell or license copyrighted data processing software to any public agency or private person. Fla. Stat. § 119.084(2)

(a) (2006). Prices or fees for the sale or licensing of copyrighted data processing software “solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).” *Id.*

## 2. Geographic Information Systems.

The Florida Attorney General has determined that maps and related data produced by a county for purposes of county business are public records. Fla. Att’y Gen. Op. 03-42 (2003). The Attorney General explained:

I am not aware of . . . any statute that would generally allow counties or county agencies to secure copyrights for or license materials produced by the county for official purposes. Rather, these materials have been produced using public funds and, by law, are available to the public at the cost of copying without regard to the purposes for which the information is to be used.

*Id.* A county thus may not restrict use of public documents by securing copyright protection and requiring license agreements for its Geographic Information Systems maps and related data in order to regulate and authorize redistribution of such materials for commercial use. *Id.* However, to the extent a county receives copyrighted work in the course of its official business, federal statutes will control reproduction of such materials. *See id.*; *see also Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. 2d DCA 2005) (county property appraiser has no right to assert copyright protection and require license agreements for Geographic Information Systems maps that were created in the ordinary course of county business and are public records).

## K. On-line dissemination.

An agency has discretion to provide access to public records by remote electronic means. *See* Fla. Stat. § 119.085. Fees for remote electronic access must be in accordance with § 119.07(1). If an agency chooses to provide remote access, the custodian must provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which by general or special law are exempt from § 119.07(1). *Id.*

The Attorney General has approved a municipality’s creation of a static website containing documents sought through a records request, as well the municipality’s demand for reimbursement from the requestor of the funds expended in creating the website, which cost substantially less than the fee for copying the requested documents. Op. Att’y Gen. Fla.06-30 (July 20, 2006).

## IV. RECORD CATEGORIES — OPEN OR CLOSED

### A. Autopsy reports.

Generally, autopsy reports made by a district examiner are subject to Chapter 119 (Public Records Law). *See* Op. Att’y Gen. Fla. 78-23 (1978) (autopsy reports made by a district medical examiner pursuant to Fla. Stat. § 406 (1991) are public records and should be held open to inspection by the public). *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991) (still photographs and videotapes taken by the police of an autopsy are public records). *But see, Palm Beach Newspapers v. Telizzese*, 6 Fla. Supp. 2d 8 (Fla. 15th Cir. 1984) (there was no compelling reason to continue to withhold an autopsy report from the public where release of the report no longer posed a threat to a continuing investigation, and section 406.17 operated to repeal a special law which created an exception to the public records law in providing that records prepared by the Palm Beach County medical examiner were confidential). *Cf. Yeste v. Miami Herald Publ’g*, 451 So. 2d 491 (Fla. 3d DCA 1984), *petition for review denied*, 461 So. 2d 115 (Fla. 1984) (section 382.008(6) makes the medical certification of the cause of death in death certificate when no autopsy was performed by a medical examiner confidential by implication and therefore exempt from public inspection and copying pursuant to section 119.07(3)(a)).

However, in 2001, the state legislature exempted from the disclo-

sure requirements of section 119.07(1) and section 24(a), Art. I photographs or video or audio recordings of an autopsy in the possession of a medical examiner or any person assisting the medical examiner who may have possession of the photograph, video, or audio recording. H.B. No 1083, 2001 Fla. Sess. Law Serv. Ch. 2001-1 (H.B. 1083) (West). The surviving spouse or, if no surviving spouse, the surviving parent(s), or if no surviving spouse or parent, an adult child may access the autopsy records, and a court may grant any person access to such materials upon a showing of good cause. *Id.* The Florida Seventh Circuit Court applied the exemption in *Earnhardt v. Volusia Cnty., Office of Med. Exam’r*, No. 2001-30373-CICI, (Fla. 7th Cir. 2001), to withhold from the media and interested individuals access to autopsy photographs of famed race car driver Dale Earnhardt. On appeal, the court held that the exemption was not unconstitutionally overbroad. *Campus Commc’ns Inc. v. Earnhardt*, 821 So. 2d 388 (Fla. 5th DCA 2002).

### B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

### C. Bank records.

To the extent that bank records are records of a “public agency” and are not within a statutory exemption, they are subject to the disclosure requirements. *Cf.* Op. Att’y Gen. Fla. 73-167 (1973) (records maintained by the abandoned property section of the Dept. of Banking and Finance are subject to inspection). *See* Fla. Stat. § 517.2015(1995) (exempting records obtained pursuant to an investigation by Dept. of Banking and Finance until completion of the investigation); Fla. Stat. § 17.076(5) (1995) (exempting all direct deposit records under program established by Dept. of Banking and Finance made prior to October 1, 1986, and with respect to subsequent records, the names of authorized institutions and the account numbers of the beneficiaries).

### D. Budgets.

### E. Business records, financial data, trade secrets.

Unless statutorily exempt, business records and financial data are subject to disclosure under Chapter 119.

*Trade Secrets.* Trade secrets are exempt from inspection. *Sepro Corp. v. Fla. Dep’t of Env’tl. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003); Fla. Stat. § 815.045; *see also* Freedom of Information Act, 5 U.S.C. § 552(b) (4) (exempting trade secrets from disclosure); Fla. Stat. § 337.14(1) (1995) (exempting financial statements submitted to the Department of Transportation from inspection by the Department of Professional Regulation, Board of Accountancy); Fla. Stat. §§ 119.07(3)(o) and 815.04(3)(a)(1995) (exempting data processing software obtained by an agency under a licensing agreement where such software is a trade secret, as defined in Fla. Stat. § 812.081 (1995), and exempting sensitive agency-produced data processing software); Fla. Stat. § 112.21(1) and 112.215(7) (1995) (exempting records identifying participants, and their personal account activities, in tax-sheltered annuities, custodial accounts, or deferred compensation plans, established by any government entity); Fla. Stat. § 403.111 (1995) (exempting information relating to secret processes and methods of manufacture or production).

In a recent opinion, it was determined that lists of subscribers and purchasers and a seller’s contracts, reports, and communications with suppliers and vendors constituted trade secrets and were exempt from disclosure as public records, but that customer complaints and responses were not. *James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A. v. Rodale, Inc.*, 41 So. 3d 386 (Fla. 1st DCA 2010),

*Attorney Work Product.* In *City of North Miami v. Miami Herald Publishing Co.*, 468 So. 2d 218 (Fla. 1985), the Supreme Court concluded that written communications between lawyers and governmental attorneys are not exempt from Chapter 119. *See also, Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998); *New v. Miami Herald Publ’g Co.*, 462 So. 2d 821 (Fla. 1985). However, the Legislature then amended the Public Records Law in Section 119.07(3)(k)(1) to exempt public attorney work product. It provides that records prepared by or at the

express direction of an agency's attorney, which reflect a mental impression, conclusion, litigation strategy or legal theory of the attorney or agency, and which were prepared exclusively for civil or criminal litigation or adversarial administrative proceedings, or in anticipation of imminent litigation or proceedings, are exempt from disclosure until the conclusion of the litigation or proceedings. *Evans v. State*, 995 So. 2d 933, 941-42 (Fla. 2008) (holding that criminal defendant was not entitled to letter from State Attorney to witness because letter contained State Attorney's mental impression about claims raised in post-conviction motion for relief and was created exclusively for post-conviction evidentiary hearing "as contemplated in section 119.071(1)(d)1, Florida Statutes (2007)"); *Kearse v. State*, 696 So. 2d 976, 988-89 (Fla. 2007) (holding that letter containing Assistant State Attorney's mental impression about case "clearly fits within the exemption [under 119.071(1)(d)1] of attorney work product prepared with regard to the ongoing postconviction proceedings"); *Lopez v. State*, 696 So. 2d 725 (Fla. 1997) (handwritten notes concerning defendant's case were exempted from disclosure to defendant); *but see Lightbourne v. McCollum*, 969 So. 2d 326, 333-34 (Fla. 2007) (holding that memoranda prepared by agency attorney were not entitled to exemption from public records requests under section 119.071(1)(d)1 because they contained factual information, instead of mental impressions and litigation strategy, and were not prepared for litigation purposes).

In addition, in *Wagner v. Orange County*, 960 So. 2d 785, 791-92 (Fla. 5th DCA 2007), the court held that the section 119.071(1)(d) exemption from public record disclosure of documents prepared for litigation extends to post-judgment collection efforts, including claim bills, and prevents a plaintiff from acquiring the litigation file of a private firm hired to defend county.

#### F. Contracts, proposals and bids.

Fla. Stat. section 119.07(3)(m) (1995) provides that sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from disclosure until such time as the bids or proposals are opened. However, submissions which are not technically "bids" may be subject to inspection. *See* Op. Att'y Gen. Fla. 74-245 (1974) (developer's plan submitted to flood control district for review and recommendation is a public record subject to inspection).

#### G. Collective bargaining records.

Work products by a public employer made in preparation for and during negotiations are exempt from the Public Records Law, Chapter 119. Fla. Stat. § 447.605(3) (1995). In addition, discussions between a chief executive officer and the legislative body or public employer relative to collective bargaining are exempt from disclosural requirements of the public records law. Fla. Stat. § 447.605(1) (1995). However, proposals and counter proposals presented during the course of collective bargaining are subject to Public Records Law section 119.07(1). *Compare* Inf. Op. Att'y Gen. Fla. to Dr. Gus Sakkis (July 7, 1969) (the Legislature did not intend section 447.605(3) to exempt budgetary or fiscal information from the purview of section 119); *Warden v. Bennett*, 340 So. 2d 977, *supra*, (ordering working papers used in preparing a college budget produced for inspection by a labor organizer).

#### H. Coroners reports.

Not addressed, but see Autopsy Reports above (IV.A.).

#### I. Economic development records.

Florida Statute 288.075 provides certain exemptions from the disclosure requirements of Chapter 119 for the records of economic development agencies.

#### J. Election records.

Election records which are not statutorily exempt from Chapter 119 are subject to inspection. *Cf. Sentinel Commc'ns Inc. v. Anderson*, No. 01-48 CA-SW, 2001WL 688528 (Fla. Cir. Ct. Jan. 19, 2001) (writ of mandamus issued to compel Supervisor of Elections to mechanically separate for plaintiff newspaper undervotes and overvotes cast on bal-

lots); Op. Att'y Gen. Fla. 75-17 (1975) (lists of names and addresses of persons requesting absentee ballots are available for inspection); Op. Att'y Gen. Fla. 74-284 (1974) (poll list kept by the election board at the poll place on the day of election is not available to the public until transmission of the poll list and registration books to the supervisor of elections);

Several statutory provisions exist which limit access to election records. For example, investigations of complaints filed with the Division of Elections or the Florida Elections Commission, along with relevant reports and recommendations are exempt from Chapter 119 until disposition of such complaint. Fla. Stat. § 106.25(6) (1995). *See* Op. Att'y Gen. Fla. 77-46 (1977).

#### 1. Voter registration records.

Although citizens may examine the registration books, copying of such books is prohibited. Fla. Stat. § 98.211 (1995). Information regarding requests for absentee ballots is exempt from disclosure. Fla. Stat. § 101.62(3) (1995).

#### 2. Voting results.

When ballots are produced for inspection, no person other than the supervisor of elections or his employees may touch the ballots. Fla. Stat. § 119.07(1)(c) (1991).

#### K. Gun permits.

Florida law places significant limits the disclosure of firearm ownership records. In 2006, the Florida Legislature enacted Fla. Stat. sec. 790.0601 (2006), which outlines a public records exemption for concealed weapons. Under section 790.0601, personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm is confidential and exempt from disclosure under Fla. Stat. sec. 119.07 and Article I, sec. 24(a) of the Florida Constitution, which give every person the right to inspect and copy public records. Disclosure of such information is permitted, however, when (1) the applicant or licensee has given his or her express written consent, (2) a court orders disclosure upon a showing of good cause, or (3) a law enforcement agency requests disclosure in connection with the performance of its lawful duties. Fla. Stat. sec. 790.0601(2).

Florida law also prohibits the state from maintaining a list, record, or registry of privately owned firearms or law-abiding firearm owners. *See* Fla. Stat. sec. 790.335(2) (2006); *see also* Fla. Stat. sec. 790.065(4) (2008) (prohibiting the state from maintaining records of the names of approved firearm purchasers or transferees or records of firearm transactions and deeming criminal record checks created by the Department of Law Enforcement confidential, exempt from the provisions of Fla. Stat. sec. 119.07(1), and barred from disclosure). Section 790.335, which was enacted in 2004 and amended in 2006, explains the legislative intent underlying the statute: such records are not tools for law enforcement or for fighting terrorism, but rather can become instruments of profiling, harassment, or abuse of law-abiding citizens who choose to exercise their right under the Second Amendment of the United States Constitution to keep and bear arms. Fla. Stat. sec. 790.335(1)(a). Florida law does, however, set forth several exceptions permitting disclosure. Section 790.335(3) allows, for example, the keeping of records of firearms used in the commission of a crime, records relating to persons convicted of a crime, and records of firearms reported stolen. Additionally, both section 790.335(3)(d) and section 790.065(4)(b) permit the maintenance of records pursuant to federal law.

Note, however, that both section 790.0601 and section 790.065 will be repealed in the near future unless the Florida Legislature takes further action. Specifically, section 790.0601 is subject to the Open Government Sunset Review Act, Fla. Stat. 119.15, and will be repealed on October 2, 2011, unless reenacted by the Legislature, and section 790.065 provides that it will be repealed effective October 1, 2009.

## L. Hospital reports.

Public hospital records are subject to disclosure absent statutory examination. *Op. Att’y Gen. Fla. 97-49 (1997)* (records relating to the operation of hospital are subject to Chapter 119); *Tribune Co. v. Hardee Mem’l Hosp.*, Case No. CA-91-370 (10th Cir. Hardee County, August 1991) (settlement agreement entered in lawsuit against hospital alleging hospital swapped babies was public record subject to disclosure despite confidentiality provision in agreement). However, many statutory exemptions limit public access to hospital records. *See Fla. Stat. § 395.0193(6)* (records of peer review committees and governing boards of hospitals which relate to disciplinary proceedings against staff); *Fla. Stat. § 455.241(2) (1995)* (records of diagnosis, treatment and examination may not be released without written authorization of the patient); *Fla. Stat. § 394.459(9) (1991)* (community mental health facility established under the Florida Mental Health Act is prohibited from releasing any part of a patient’s clinical record, including the patient’s name, address, or other identifying information. Such records are exempt from section 119.07(1), and may only be released to the patient, guardian, or law enforcement agencies which must maintain confidentiality record.

Records of pregnancy termination are also privileged information and deemed to be confidential records, except upon court order. Such information may not pass from the hospital and may lawfully be released only when authorized by a court of competent jurisdiction. *Fla. Stat. § 390.002 (1995)*.

In addition, the following public hospital records are exempt from section 119.07(1): Preferred provider organization contracts, health maintenance organization contracts, documents revealing a hospital’s plans for marketing hospital services which are or may be reasonably expected to be provided by the hospital’s competitors, and documents that reveal trade secrets as defined in section 688.022.

## M. Personnel records.

The Florida Supreme Court in *Douglas v. Michel*, 464 So. 2d 545 (Fla. 1985) held there is no state or federal constitutional right of disclosural privacy in hospital personnel records in the context of the public records law. However, medical records have been held to be exempt from disclosure. *See Lewis v. Schreiber*, 611 So. 2d 531 (Fla. 4th DCA 1992) (salary information subject to inspection); *Shevin v. Byron, Harless, Schaffer, Reid & Assocs.*, 379 So. 2d 633 (Fla. 1980) (resumes subject to inspection); *News-Press Publ’g Co. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987) (reports of physical examinations of fire fighters performed pursuant to contract with city not subject to disclosure under public records law); *Fla. Stat. § 112.08(70)* (exempting all medical records relating to employees enrolled in a group insurance plan). *Accord Gadd v. News-Press Publ’g Co.*, 412 So. 2d 894 (Fla. 2d DCA 1982) (a newspaper is entitled under Chapter 119 to inspect the personnel files of present and past medical staff physicians of a public hospital); *Clark v. Walton*, 351 So. 2d 353 (Fla. 4th DCA 1977) (city clerk obligated by the public records law to furnish union organizer with names and addresses of all city employees); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976) (labor organization is entitled to obtain records containing names and address of employees of public college); *Beaulieu v. Bd. of Trs. of Univ. of W. Fla.*, 2007 WL 2900332, at \*8 (N.D. Fla. Oct. 2, 2007) (holding that a party cannot demand the destruction of public records contained in their personnel file which are open to disclosure).

*Law Enforcement Personnel Records.* Access to certain personnel records of law enforcement officers is more restricted than access to the records of other public employees. For example, complaints filed against law enforcement officers or correctional offices with a law enforcement agency or correctional agency and information obtained pursuant to the agency’s investigation are confidential until the conclusion of the internal investigation or until the investigation ceases to be active without a finding relating to probable cause. *Fla. Stat. § 112.533(2) (1995)*. Similarly, in *Fraternal Order of Police v. Rutherford*,

51 So. 3d 485 (Fla. 1st DCA 2011), internal investigations of the Jacksonville Sheriff’s Office’s Response to Resistance Board, conducted when an officer uses force, were deemed subject to the confidentiality provisions of sections Fla. Stat. §§ 112.532(4)(b) and 112.533(2)(a), which are exemptions from the public’s general right to access public records and meetings under Article I, § 24 of the Florida Constitution and Fla. Stat. § 119.01(1). These confidentiality provisions apply only during the period of the investigation and do not prohibit public access, but merely delay it until the investigation is completed or abandoned. *See also AXA Equitable Life Ins. Co. v. Sands*, 2006 WL 5217762 at \*1 (N.D. Fla. Oct. 2, 2006) (expressing that under Chapter 119 the defendant could depose the state medical examiner as soon as the current criminal investigation is concluded).

However, Florida courts have distinguished the acquisition of public documents under Chapter 119 with a party’s discovery rights to access materials through judicially-created rules of procedure. *See Reiser v. Wachovia Corp.*, 2007 WL 1696033 at \*2 (M.D. Fla. June 12, 2007) (citing *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420, 425 (Fla. 1979); *B.B. v. Dep’t of Child & Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th Dist. Ct. App. 1999); *see also Dekarentos v. Peguero*, 47 So. 3d 879 (Fla. 3d DCA 2010) (Fla. Stat. § 119.071(4)(b) does not exempt police officers’ pre-employment psychological evaluations from disclosure in discovery in a wrongful death action because the statute does not create a privilege that would insulate medical records from discovery in litigation).

Furthermore, the home address, telephone numbers and photographs of active or former law enforcement personnel, their spouses and children, as well as the places of employment of spouses and children and the names and location of schools attended by their children are closed. *Fla. Stat. § 119.07(3)(i) (1995)*.

*Public School Employee Records.* Access to certain public school system employee personnel files is statutorily limited. For example, complaints and any material relating to the investigation of a complaint against an employee are confidential until the conclusion of the preliminary investigation or until the preliminary investigation ceases to be active. *Fla. Stat. §§ 231.262(4); 231.291(3) (1995)*. In addition, employee evaluations are confidential until the end of the school year immediately following the school year during which the evaluation was made. *Id.* Payroll deduction records of a school employee are confidential, as are an employee’s medical records. *Fla. Stat. § 231.291(3) (1995)*.

Personnel files of faculty and administrators of institutions of higher learning are exempt from inspection. *Fla. Stat. § 240.253*. Records reflecting evaluations of performance may be viewed only by the employee and university officials. *Cantanesse v. Ceros-Livingston*, 599 So. 2d 1021 (Fla. 4th DCA), *review denied*, 613 So. 2d 2 (Fla. 1992). The statute allows regulations of the Board of Regents to prescribe the content and custody of limited access records which an institution in the state university system may maintain on its employees. Such records are limited to information reflecting evaluations of employee performance and are open for inspection only by the employee and by officials of the university who are responsible for supervision of the employee. *See Tallahassee Democrat v. Fla. Bd. of Regents*, 314 So. 2d 164 (Fla. 1st DCA 1975); *Op. Att’y Gen. Fla. 73-212A (1973)*. In 1979, the Legislature again amended this section to permit each university to prescribe the content and custody of limited access records which that university may maintain on its employees. *Fla. Stat. § 240.253 (1995)*. Such records are also limited to information reflecting evaluations of employee performance.

### 1. Salary.

In *Fla. Power & Light Co. v. Fla. Pub. Serv. Comm’n*, 31 So. 3d 860 (Fla. 1st DCA 2010), certain compensation information of Florida Power & Light employees was deemed confidential and exempt from public disclosure in connection with ratemaking proceedings pursuant to *Fla. Stat. §§ 119.07(1) and 366.093(2)*.

## 2. Disciplinary records.

Personnel records, including any disciplinary records in an agency employee's personnel file, are subject to public inspection pursuant to the provisions of Chapter 119. Op. Att'y Gen. Fla. 94-75 (Sept. 7, 1994); see Op. Att'y Gen. Fla. 05-23 (Apr. 5, 2005).

## 3. Applications.

Applications for public employment fall within the purview of Chapter 119, and are thus subject to public inspection and examination. Op. Att'y Gen. Fla. 77-48 (May 19, 1977).

## 4. Personally identifying information.

*United States Census Bureau Information.* Fla Stat. § 119.071(1)(g) (1) provides that: "United States Census Bureau address information, which includes maps showing structure location points, agency records verifying addresses, and agency records identifying address errors or omissions, held by an agency pursuant to the Local Update of Census Addresses Program, Title 13, United States Code, Pub. L. No. 103-430, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution."

*Social Security Numbers.* Fla Stat. § 119.071(5)(a)(5) provides that: "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."

*Bank Account Information.* Fla Stat. § 119.071(5)(b) provides that: "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."

*Government-Sponsored Activities for Children.* Fla Stat. § 119.071(5)(c)(2) provides that: "Information that would identify or help locate a child who participates in a government-sponsored program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution." Information that would locate the parent or guardian of a child who participates in a government-sponsored recreation program is also exempt. See Fla Stat. § 119.071(5)(c)(3).

*Record Supplied to Telecommunication Companies.* Fla Stat. § 119.071(5)(d) provides that: "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."

*Ridesharing Arrangements.* Fla Stat. § 119.071(5)(e) provides that: "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."

*Provided Medical History Records and Information Relating to Health or Property Insurance.* Fla Stat. § 119.071(5)(f) provides that: "Medical history records and information related to health or property insurance provided to the Department of Community Affairs, 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."

*Biometric Identification Information.* Fla Stat. § 119.071(5)(g)(1) provides that: "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." Biometric information includes any record of friction ridge detail, fingerprints, palm prints, and footprints. See *id.*

*Paratransit Services.* Fla Stat. § 119.071(5)(h)(1) provides that: 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.

## N. Police records.

### 1. Accident reports.

As a general rule, accident reports are subject to Public Records Law (Chapter 119) disclosure requirements. However, police accident records often encompass exempt information, such as confessions or investigatory data, discussed at 4. below, thus the portions of reports containing such information will be exempt from public records disclosure.

### 2. Police blotter.

Police blotters are subject to public inspection.

### 3. 911 tapes.

To the extent that records of 911 tapes are not otherwise statutorily exempt from the mandates of the Public Records Law (Chapter 119) (i.e., confessions, etc.), they are subject to public inspection.

### 4. Investigatory records.

The Legislature has exempted from public inspection certain criminal intelligence and investigatory records and files. Fla. Stat. § 119.07(3)(f) (1995). See Fla. Stat. § 119.011(3)(a), (b) and (c), (1995) (defining criminal intelligence and investigatory information). See also, *Rose v. D'Allessandro*, 380 So.2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in discharge of his investigatory duties are subject to terms of statute relating to criminal intelligence and intelligence information). The exemption includes criminal intelligence or investigatory information received by a Florida criminal justice agency from a non-Florida criminal justice agency on a confidential or similarly restricted basis. Fla. Stat. § 119.072 (1995). The purpose of the intelligence/investigatory information exemptions is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. See *Tribune Co. v. Public Records*, 493 So.2d 480 (Fla. 2d DCA 1986), *review denied*, 503 So.2d 327; *Tribune Co. v. Cannella*, 438 So.2d 516 (Fla. 2d DCA 1983), *rev'd on other grounds*, 458 So.2d 1075 (Fla. 1984), *app. dismissed*, 105 S.Ct. 2315 (1985).

The police investigative/intelligence records exemption only applies when such records are active. Fla. Stat. § 119.07(3)(b) (1995). Intelligence information is considered active "as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities." Fla. Stat. § 119.011(d)(1) and (2) (1995). Investigative information is considered active "as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Fla. Stat. § 119.011(3)(d)(2) (1995). See generally, *Christy v. Palm Beach County Sheriff's Office*, *supra*, 698 So.2d 1365 (thirteen years old arrest record which was not pertinent to pending prosecution was not exempt); *Tribune Co. v. Cannella*, *supra*, 438 So.2d 516 (information filed before the investigative process begins cannot be criminal investigative information, nor can such information be criminal intelligence information, nor can such information be criminal intelligence information which is information collected in an effort to anticipate criminal activity). See also Op. Att'y Gen. Fla. 96-05 (1996) (criminal investigation of police officer is not exempt from public records disclosure requirements unless the record is deemed "active"). Cf. *Fla. Freedom Newspapers Inc. v. Dempsey*, 478 So.2d 1128 (Fla. 1st DCA 1985) (there is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations).

Criminal intelligence/investigatory information is considered to be "active" while such information is directly related to pending prosecutions or appeals. Fla. Stat. § 119.011(d); see also *Tal-Mason v. Satz*, 614 So.2d 1134 (Fla. 4th DCA), *rev. denied* (Fla. 1993); *News-Press Publ'g Co. Inc. v. Sapp*, 464 So.2d 1335 (Fla. 2d DCA 1985); *Wells v. Sarasota Herald Tribune Co.*, 546 So.2d 1105 (Fla. 2d DCA 1989); *Tribune Co. v. Public Records*, 493 So.2d 480, *supra*, (actions for post-conviction relief

after a conviction has been affirmed on direct appeal are not pending appeals for purposes of section 119.011(3)(d)(2). *Cf. Satz v. Gore Newspaper Co.*, 395 So.2d 1274 (Fla. 4th DCA 1981) (a state attorney's files on a civil matter which had been concluded contained criminal investigative information where testimony showed such information was and could be used to prevent and monitor possible criminal activity). Once the conviction and sentence have become final, the exemption no longer applies. *State v. Kokal*, 562 So.2d 324 (Fla. 1990).

Records disclosed to a criminal defendant are not exempt as investigative or intelligence information. Fla. Stat. § 119.011(3)(c)(5) (1995). *See Satz v. Blankenship*, 407 So.2d 396 (Fla. 4th DCA 1981), *cert. denied*, 413 So.2d 877 (Fla. 1982) (newspaper reporter was entitled to access to tape recordings concerning a defendant in a criminal prosecution where the recording had been disclosed to the criminal defendant); *City of Miami v. Post-Newsweek Stations Fla. Inc.*, 837 So. 2d 1002 (Fla. 3rd DCA 2002) (photograph of mayor's wife taken after alleged domestic assault and statement made to police were exempt where defendant had not made a discovery request for the documents); *Bludworth v. Palm Beach Newspapers Inc.*, 476 So.2d 775 (Fla. 4th DCA), *cert. denied*, 488 So.2d 67 (Fla. 1985) (documents given or required by law or agency rule to be given to a person arrested are disclosable to the public). *But see, Fla. Newspapers Inc. v. McCrary*, 13 F.L.W. 92 (Fla. 1988) (Supreme Court holds the trial court may temporarily seal materials given in discovery upon proper showing embodying the 3-part test set forth in *State v. Bundy*); *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683 (S.D. Fla. 1990) (public records law not applicable to actions of U.S. Attorney; U.S. Attorney's release of photographs to defendants during pretrial discovery in pending *federal prosecution* did not subject photographs to disclosure).

#### a. Rules for active investigations.

*See McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009) (the Sheriff's Office's internal affairs investigation procedures did not violate the Sunshine Law by failing to make memoranda relating to the investigations public until after the investigations were concluded).

#### b. Rules for closed investigations.

*See Rameses, Inc. v. Demings*, 29 So. 3d 418, 423 (Fla. 5th DCA 2010) (holding that "disclosure to a criminal defendant during discovery of unredacted versions of undercover police surveillance recordings does not destroy, in a public records context, the exemptions contained in section 119.071 for information relating to the identity of undercover law enforcement personnel" and court could later order that "faces of the undercover officers be obscured prior to release of the surveillance recordings").

### 5. Arrest records.

The following information relating to arrest records is not considered to be criminal intelligence/investigative information and is available for inspection:

- a. the name, sex, age and address of a person arrested;
- b. the time, date and location of the incident and of the arrest;
- c. the crime charge;
- d. documents given or required by law or agency rule to be given to the person arrested;
- e. information and indictments except as provided in Fla. Stat. secs. 905.26 119.011(3)(c) (1995).

*Juvenile Records.* Juvenile records traditionally have been treated differently from other records within the criminal justice system. The Florida Juvenile Justice Act exempts most information pertaining to juveniles obtained by any judge, employee of the court, authorized agent of the Department of Health and Rehabilitative Services, the Department of Corrections, or any law enforcement agent in the discharge of their official duties from Chapter 119, and prohibits disclosure of such information to anyone not specifically authorized to

receive such information. Fla. Stat. § 39.045(5) (1995). However, Fla. Stat. § 39.045(9) (1995) authorizes a law enforcement agency to release for publication the records of a child taken into custody under certain limited circumstances, such as where the juvenile has been taken into custody for a violation of law which would be a felony if committed by an adult.

### 6. Compilations of criminal histories.

Criminal histories, like other non-exempt public records, are subject to the statutory disclosure requirements of the Public Records Law, Chapter 119. *See, Op. Att'y Gen. Fla. 77-125* (1977) (Florida's Public Records Law applies to criminal history information compiled and maintained by the Florida department of criminal law enforcement). However, courts have the power to seal or expunge records containing criminal history information under statutorily specified circumstances. Fla. Stat. § 943.058 (1991). *See State v. Herstik*, 475 So.2d 1268 (Fla. 4th DCA 1985); *Walker v. State*, 493 So.2d 488 (Fla. DCA 1986), *cert. denied*, 503 So.2d 328; *Op. Att'y Gen. Fla. 75-29* (1975); *Op. Att'y Gen. Fla. 76-70* (1976).

A circuit court may order criminal history records to be expunged only upon a specific finding of unusual circumstances requiring the exercise of the extraordinary equitable powers of the court, and upon a finding that the following criteria have been met:

- a. The person who is the subject of the record has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation;
- b. The person who is the subject of the record has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the records expunction petition pertains;
- c. The person who is the subject of the record has not secured a prior records expunction or sealing . . . Fla. Stat. secs. 943.058(2) and 943.058(3) (1995).

### 7. Victims.

The name, sex, age and address of the victim of a crime is open to public inspection under the Public Records Law. Fla. Stat. § 119.011(3)(c)(2) (1995), but other information concerning victims, such as the victim's telephone number or address or personal assets, is exempt, Fla. Stat. § 119.03(3)(s); *Op. Att'y Gen. Fla. 96-82* (1996). And, criminal intelligence or investigative information revealing the identity of a victim of sexual battery or child abuse, and criminal intelligence or investigative information revealing personal assets of a crime victim which were not involved in the crime are not open records. Fla. Stat. § 119.07(3)(f) and (i) (1995).

### 8. Confessions.

Information revealing the "substance of a confession" of a person arrested or of witness lists exchanged pursuant to the provisions of Fla. R. Crim. P. 3.220 is not subject to the disclosure requirements until such time as the charge is finally determined by adjudication, dismissal or other disposition. Fla. Stat. § 119.07(3)(k) (1995). Portions of the initial complaint and arrest report in a criminal case file which are not part of the "substance of a confession" or, in other words, the material parts of a statement made by a person charged with the commission of a crime in which that person acknowledges guilt of the essential elements of the act or acts constituting guilt of the essential elements of the act or acts constituting the entire criminal offense, are not exempt from section 119.07(1)(a). *Op. Att'y Gen. Fla. 84-33* (1984).

### 9. Confidential informants.

Information revealing the identity of confidential informants or sources is exempt from the provisions of Chapter 119. Fla. Stat. § 119.07(3)(c) (1995). *See City of St. Petersburg v. Rommie ex rel. Dillinger*, 719 So.2d (Fla. 2d. DCA 1998) (after in camera inspection of records and disclosure of informant's identity in the trial court, access to records was granted); *Salcines v. Tampa Television*, 454 So.2d 639

(Fla. 2d DCA 1984) (the exemption provided by section 119.07(3)(c), protects from the disclosure requirement information revealing the identity of confidential informants or sources regardless of whether the informants or sources are no longer active or any have, through other sources, been identified as such); *John Doe v. State of Fla.*, 901 So. 2d 881 (Fla. 4th DCA 2005) (prohibiting state from releasing unredacted documents that might identify petitioner as source in criminal investigation).

### 10. Police techniques.

See *Miami-Dade Cnty. v. Prof'l Law Enforcement Ass'n*, 997 So. 2d (Fla. 3d DCA 2009) (aviation unit of county police department required to make public personal flight logs of department pilots, which are created as part of their administrative duties and is the official business of the department's aviation unit, as public records under Fla. Stat. section 119.011(11)).

Information revealing police surveillance techniques, procedures or personnel, and information revealing undercover personnel of any criminal justice agency is not subject to public inspection. Fla. Stat. § 119.07(3)(d) (1995).

### 11. Mug shots.

Mug shots are subject to public inspection unless they are exempt criminal intelligence information or are otherwise exempt. Fla. Stat. § 119.011(1); Fla. Stat. § 119.07(3)(b).

### 12. Sex offender records.

Certain sex offender records are considered public records, and thus are open to inspection and copying by the public. Fla. Stat. § 944.606; Op. Att'y Gen. Fla.93-32 (Apr. 22, 1993); see Op. Att'y Gen. Fla. 97-09 (Feb. 10, 1997).

### 13. Emergency medical services records.

Rescue reports containing medical information that are prepared by an emergency medical technician are public records subject to public inspection under Chapter 119. Op. Att'y Gen. Fla. 80-21 (Mar. 13, 1980). However, records of emergency calls that contain examination and treatment information, and that are maintained in accordance with Florida Statute 401.30, are confidential and exempt from Chapter 119. Op. Att'y Gen. Fla. 09-30 (June 15, 2009); see Op. Att'y Gen. Fla. 86-97 (Nov. 3, 1986).

### O. Prison, parole and probation reports.

Recordings of telephone calls made from jail are not public records pursuant to Fla. Stat. § 119.011(12). *Bent v. State*, 46 So. 3d 1047 (Fla. 4th DCA 2010).

The Florida legislature has provided that “[t]he Department of Corrections shall promulgate rules and regulations stating what portions of its files, reports or records are considered confidential and subject to restricted view. Fla. Stat. § 945.10(1) (1995). Similarly, the Department may promulgate rules it deems expedient in the performance of its duties limiting access to information it collects and places in its permanent records concerning every person who may become subject to parole, probation, or pardon and communication of sentence. Fla. Stat. § 945.25(4) (1995). See Op. Att'y Gen. Fla. 74-247 (1974).

### P. Public utility records.

Records kept in connection with a publicly owned and operated utility are public records and thus subject to section 119.01. See Op. Att'y Gen. Fla. 74-35 (1974) (addressing the applicability of Chapter 119 to a city owned electrical utility system). Furthermore, there is no exception to the law in cases where the city is acting in a proprietary capacity. *Id.*; *State ex. rel. Cummer v. Pace*, 159 So. 2d 679 (Fla. 1967). However, in light of recent legislation, this rule is now of limited efficacy. The Public Service Commission now has reasonable access to all public utility records and upon request of the public utility, any records received by the Commission shown to be proprietary confiden-

tial business information will be kept confidential and exempt from Fla. Stat. § 119.07(1), § 366.093(1) (1995).

In addition, in any proceeding before the Public Service Commission, the Commission may issue protective orders protecting a public utility from discovery of proprietary confidential business information, upon a showing that such protection is necessary. However, if the Commission determines that discovery of proprietary confidential business information is necessary to protect the public interest, the Commission must enter an order limiting such discovery in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure, and such proprietary confidential business information will be exempt from Fla. Stat. § 119.07(1), § 366.093(2) (1995).

### Q. Real estate appraisals, negotiations.

No right of public inspection of appraisals, other reports relating to value, offers, and counter offers exists in any case in which an agency seeks to acquire real property by purchase or through the power of eminent domain. Fla. Stat. secs. 125.355 (counties); 166.045 (municipalities); 235.054 (school boards); 119.07(3)(n) (1995). The exception expires upon the execution of a valid option contract or the conditional acceptance by the agency of a written offer to sell. *Id.*

Fla. Stat. secs. 125.355(1) and 166.045(1) (1991) provide for the temporary confidentiality of certain records pertaining to the purchase of real property by counties and municipalities, respectively, until an option contract is signed, or if there is no option contract, 30 days before a contract is considered for approval by the governing body. See *Poole v. Port Orange*, 33 So. 3d 739, 740-41 (Fla. 5th DCA 2010).

### R. School and university records.

#### 1. Athletic records.

There is no Florida authority specifically relating to access to records of athletic programs or organizations. However, in *National Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1207 (Fla. 1st DCA 2009), a transcript of a hearing before the NCAA's Committee on Infractions involving a state public agency, Florida State University, and an appellate response by the Committee were deemed public records under section 119 and were not exempt from disclosure under federal or state law.

#### 2. Trustee records.

There is no Florida authority specifically relating to trustee records.

#### 3. Student records.

Access to student records is limited by Fla. Stat. section 228.093(3)(d) (1995), which provides every student a right of privacy with respect to educational records relating to such student. See, e.g., *Fla. State Univ. v. Hatton*, 672 So.2d 576 (Fla. 1st DCA 1996)(disciplinary investigation records which contained “identifying information about the subject student and other students who were accomplices, witnesses and victims” exempt); Op. Att'y Gen. Fla. 81-78 (1981) (prohibiting the public schools from releasing the lists of daily truants to law enforcement agencies without the written consent of the student or parent or guardian of the student); Op. Att'y Gen. Fla. 85-50 (1985) (prohibiting the disclosure or release of records of students enrolled in programs under the Federal Job Training Partnership Act without the written consent of a student's parent or guardian, or the student). Note, however, that a student and/or his parents has the statutory right of access to all records held by a public agency which relate to the student. Other statutes also exempt particular student records; Fla. Stat. § 232.23(1)(permanent cumulative record); § 240.237 (universities); § 240.323 (community colleges); § 230.23(4)(m)5 (exceptional student placement).

### S. Vital statistics.

#### 1. Birth certificates.

Birth records are considered exempt and may be open only as pro-

vided by law. Fla. Stat. § 382.025(1) (1995). Adoption records are also exempt from disclosure under section 63.162(1)(b) (1995). Records identifying the natural parent, adoptive parent or adopted child may only be disclosed where authorized in writing by the natural parent, adoptive parent, or adoptive child over the age of 18, or, upon order of the court. § 63.162(1)(d). The cause of death section of death and fetal death certificates and parentage, marital status, and medical information of fetal death records are confidential and exempt from disclosure. Such records are open to public inspection only as provided in section 382.008(6) (1995). In *Veste v. Miami Herald Publ'g Co.*, 451 So.2d 491 (Fla. 3rd DCA 1984), *petition for review denied*, 461 So.2d 115 (Fla. 1984), the court held that the medical certification of the cause of death in the death certificate is confidential.

## 2. Marriage & divorce.

Certified copies of all marriage certificates may be obtained by any person on request. Fla. Stat. § 382.025(4).

## 3. Death certificates.

Certified copies of death certificates excluding the confidential cause of death portion may be obtained by any person on request. Fla. Stat. § 382.025(4).

## 4. Infectious disease and health epidemics.

Fla. Stat. § 384.29 provides that: "All information and records held by the department or its authorized representatives relating to known or suspected cases of sexually transmissible diseases are strictly confidential and exempt from the provisions of s. 119.07(1)."

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

#### 1. Who receives a request?

Section 119.07(1)(a) states that "[e]very person who has custody of a public record shall permit the record to be inspected. . . ." Thus, a request to inspect or copy public records should be made to the "custodian" of such records.

The custodian is defined to be "[t]he elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his designee. . . ." See *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996) (custodian designates mode of disclosure); *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4th DCA 1998) (police officer who temporarily possessed a document for a hearing was not the custodian of the document); *Töber v. Sanchez*, 417 So. 2d 1053 (Fla. 3d DCA 1982), *petition for review denied*, *Metro. Dade Cnty. Transit Agency v. Sanchez*, 462 So. 2d 27 (Fla. 1983) (director of county transit agency, as officer charged by law with the responsibility of maintaining the office, was the "custodian" of accident reports emanating from separate agency bus accidents); Inf. Op. Att'y Gen. Fla. to Mr. Larry Haag (June 6, 1985).

#### 2. Does the law cover oral requests?

A request for copies of records which is sufficient to identify records desired must be honored by the custodian, whether the request is in writing, over the telephone, or made in person, provided that the required fees are paid. However, the custodian is not required to give out information from the records when requested by telephone, in writing, or in inspection and copying prescribed in sections 119.01, 119.07 and 119.08. Cf. Op. Att'y Gen. Fla. 80-57 (1980) (request for records sufficient to identify the records may be oral or written). Agency regulations may require requests to be in writing, if the requirement is reasonable.

#### 3. Contents of a written request.

A written request for records need not contain a detailed description of such records, so long as the request is sufficient to identify

the records. See *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935) (citizen seeking inspection of city records is not required to specify specific book of account or record that he desires to inspect). Fees for inspecting and copy public records are covered by the Statute and do not need to be addressed in a party's written request.

### B. How long to wait.

#### 1. Statutory, regulatory or court-set time limits for agency response.

No set time limit exists for agency response to a request to inspect or copy public records. The only delay permitted in the release of requested records is limited to a reasonable time to allow the custodian of the records to retrieve the records and delete those portions exempt from disclosure. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed*, 471 U.S. 1096 (1985); *Michael v. Douglas*, 464 So. 2d 545 (Fla. 1985) (24 hour delay held to violate Chapter 119); see also Op. Att'y Gen. Fla. 81-12 (1981) (city may not require an examinee to exercise his right to inspect his own examination during a designated or restricted time frame); cf. *Roberts v. News-Press Publ'g Co.*, 409 So. 2d 1089 (Fla. 2d DCA 1982) (rule allowing employee whose record is requested 24-hour notice and the right to be present at inspection is reasonable).

#### 2. Informal telephone inquiry as to status.

Although a telephone inquiry as to status of a records request is both permitted and desirable, citing the mandatory attorneys' fees provisions of Fla. Stat. section 119.12 (1995) is often the most effective method of encouraging a prompt response to a request.

#### 3. Is delay recognized as a denial for appeal purposes?

An "unreasonable" delay in providing access to records to a person who has requested the opportunity to inspect or copy the records of an agency may be treated as a denial for purposes of judicial relief. Cf. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).

#### 4. Any other recourse to encourage a response.

Citing the mandatory attorneys' fees provisions of Fla. Stat. section 119.12 (1995) is often the most effective method of encouraging a prompt response to a request.

### C. Administrative appeal.

There are no state requirements or options for administrative appeals.

### D. Court action.

#### 1. Who may sue?

Florida courts have not addressed the issue of who may sue to enforce rights under Chapter 119. However, as discussed *supra*, the statute provides "any person" with the right of access to public records, and thus standing to sue.

#### 2. Priority.

Actions filed to enforce provisions of Chapter 119 are set for immediate hearing, giving the case priority over other pending cases. Fla. Stat. § 119.11(1) (1995); Rule 2.051(b), Public Access to Public Judicial Records, Fla. R. Jud. Admin. (review of denial of access to judicial records shall be "expedited").

#### 3. Pro se.

The primary means of enforcing the provisions of Chapter 119 is to file an application for a writ of mandamus in circuit court. Although an individual is privileged to proceed *pro se*, it is not advisable to do so since a familiarity with applicable substantive and procedural law is necessary.

#### 4. Issues the court will address:

##### a. Denial.

Florida trial and appellate courts may, and have, addressed on numerous occasions the issue of whether access to public records has been wrongfully denied. See, e.g., *Warden v. Bennett*, 340 So. 2d 978 (Fla. 2d DCA 1976).

##### b. Fees for records.

Florida courts have jurisdiction to determine the propriety of fees levied by public agencies for inspection and copies of public records. See, e.g., *Davis v. McMillan*, 38 So. 666 (Fla. 1905).

##### c. Delays.

Florida courts have addressed the issue of whether delayed access to public records is tantamount to an unlawful denial of access. *Tribune v. Cannella*, 458 So. 2d 1075 (Fla. 1983).

##### d. Patterns for future access (declaratory judgment).

Florida trial courts have jurisdiction to render a declaratory judgment determining the rights and obligations of parties under Chapter 119. See Fla. Stat. § 86.011 (1991). Cf. *Roberts v. News-Press Pub. Co.*, 409 So. 2d 1089, 1092; *State ex. rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970).

#### 5. Pleading format.

The extraordinary writ of mandamus is used to gain judicial access to public records. The writ of mandamus should allege that the defendants are custodians of the public records sought and that the defendants refused to produce such records for inspection. See *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) (“mandamus was an appropriate remedy to compel the timely production of public records request under Chapter 119.”); *Donner v. Edelstein*, 415 So. 2d 830 (Fla. 3d DCA 1982). This conforms to the general rule that to show entitlement to the extraordinary writ of mandamus, a petitioner must demonstrate a clear legal right on his part, an indisputable legal duty on the part of the respondents and that no other adequate remedy exists. See, e.g., *State ex. rel. Eichenbaum v. Cochran*, 114 So. 2d 797 (Fla. 1959); *Poole v. City of Port Orange*, 33 So. 3d 739 (Fla. 5th DCA 2010).

#### 6. Time limit for filing suit.

Chapter 119 does not specify a time limit for filing suit to enforce the provisions therein. For causes of action not governed by a statute, the statute of limitations is generally four years. Fla. Stat. § 95.11(3) (1995).

#### 7. What court.

The public records act authorizes suits for injunction in circuit court in lieu of administrative remedy. See *State ex. rel. Dep’t of Gen. Servs. v. Willis*, 344 So. 2d 580, 588 (Fla. 1st DCA 1977); *Daniels v. Bryson*, 548 So. 2d 679 (Fla. 3rd DCA 1989) (injunctive relief appropriate where pattern of non-compliance with public records law together with showing of likelihood of future violation).

#### 8. Judicial remedies available.

The primary remedy available when a successful action is brought pursuant to Chapter 119 is a writ of mandamus requiring the agency to open its records for inspection. Fla. Stat. § 119.11(1) (1995); *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) (“mandamus was an appropriate remedy to compel the timely production of public records request under Chapter 119.”); *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA), review denied, 605 So. 2d 1266 (Fla. 1992); Rule 2.051(b), Public Access to Public Judicial Records, Fla. R. Jud. Admin. (review of denial of access to judicial records shall be by mandamus). Cf. *State ex. rel. Davidson v. Couch*, 155 So. 153 (Fla. 1934); *Fla. Soc’y of Newspaper Editors Inc. v. Fla. Pub. Serv. Comm’n*, 543 So. 2d

1262 (Fla. 1st DCA 1989). Mandamus is inappropriate, however, for enforcement of future violations. *Town of Manalapan*, 674 So. 2d at 790 (“trial court’s order retaining jurisdiction for reenforcement, however, was inappropriate. Mandamus is a one time order . . .”).

#### 9. Litigation expenses.

Reasonable costs and attorney fees “shall” be recovered from an agency where an action is filed against the agency to enforce provisions of Chapter 119, and the court determines that the agency unlawfully refused permission to inspect, examine or copy a public record at both trial and appellate levels. Fla. Stat. § 119.12(1) and (2) (1995).

##### a. Attorney fees.

Prior to 1984, a prevailing party was entitled to attorneys’ fees only when an agency’s refusal to allow access to records was “unreasonable.” *WFSH of Niceville v. City of Niceville*, 422 So. 2d 980 (Fla. 1st DCA 1982) (city justifiably withheld election records until court order was obtained where the city was incorrectly advised to do so); *Douglas v. Michel*, 410 So. 2d 936 (refusal must be unreasonable to recover costs and attorney fees under Chapter 119). However, the attorney fee provision was amended to authorize attorney fees and costs whenever the court finds that the agency unlawfully refused access, Fla. Stat. § 119.12 (1995). See *Jackson-Shaw Co. v. Jacksonville Aviation Auth.*, 510 F. Supp. 2d 691, 737 (M.D. Fla. 2007) (finding that to receive attorney’s fees the action filed must be to enforce the provisions of Chapter 119 and the delay in producing the documents must constitute an unlawful refusal to provide access to the requested public records); See also *B & S Utils., Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17, 23 (Fla. 1st DCA 2008) (holding that private engineering firm acting as agent for governmental entity was not liable for plaintiff’s attorneys’ fees incurred in bringing suit based on engineering firm’s denial of records because plaintiff failed to prove that denial was not done in good faith belief that engineering firm was not an agency of the governmental entity given that agency status of engineering firm was questionable); *Office of State Attorney v. Gonzalez*, 953 So. 2d 759, 764 (Fla. 2d DCA 2007) (holding that State Attorney’s office was liable for attorneys’ fees incurred in filing suit to obtain public records, even though failure to produce public records was allegedly due to mistake, and refusing to “engraft upon the statute an additional obligation for a plaintiff to make repeated requests before filing suit to enforce public records rights”) (citing cases); *News on Sun-Sentinel Co. v. Palm Beach Cnty.*, 517 So. 2d 743 (Fla. 4th DCA 1987) (attorneys’ fees awardable even when access was denied in good faith mistaken belief that documents were exempt from disclosure); *Harold v. Orange Cnty.*, 668 So. 2d 1010, 1012 (Fla. 5th DCA 1996) (refusing to assess attorneys’ fees against private party “acting on behalf of” agency, based on “good faith — even if incorrect — refusal to disclose records”); *Fla. Dep’t Law Enf. v. Ortega*, 508 So. 2d 493 (Fla. 3d DCA 1987); *Wisner v. City of Tampa*, 601 So. 2d 296 (Fla. 2d DCA 1992); *News-Press Pub. Co. v. Gadd*, 432 So. 2d 689 (question of whether award of attorneys’ fees was justified is decided by trial court as a question of fact); *Downs v. Austin*, 559 So. 2d 246 (Fla. 1st DCA 1990) (attorneys’ fees awardable for successful appeal of a denial of access); *Times Publ’g Co. v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990) (same); *WFTV Inc. v. Robbins*, 625 So.3d 941 (Fla. 4th DCA 1993) (order denying fees for non-intentional violation of Chapter 119, reversed); *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996) (attorneys’ fees and costs awarded to plaintiff when defendant disclosed documents only after legal intervention; defendant’s unreasonable delay in disclosing documents to plaintiff constitutes an “unlawful refusal” which entitles plaintiff to attorneys’ fees); *Weeks v. Golden*, 764 So. 2d 633, *supra*, (State Attorney must produce a legally acceptable excuse for failing to disclose public records to avoid paying plaintiff’s attorneys’ fees).

While a prevailing party is entitled to attorneys’ fees when access is unlawfully withheld, “[d]elay in providing access cannot in itself create liability for attorney’s fees under the Public Records laws.” *Irwin v. Miami-Dade Cnty. Pub. Schools*, 2009 WL 465066, at \*5 (S.D. Fla. Feb. 24, 2009) (citing *Office of State Attorney v. Gonzalez*, 953 So. 2d 759,

765 (Fla. 2d DCA 2007)).

**b. Court and litigation costs.**

Reasonable costs are recoverable by a prevailing plaintiff. *See* section D.9. above.

**10. Fines.**

A public officer violating any provision of Chapter 119 may be fined up to \$500. Fla. Stat. § 119.10(1) (1991).

**11. Other penalties.**

A willing and knowing infraction of Chapter 119 is punishable as a first degree misdemeanor, which is punishable by up to one year imprisonment and/or a fine up to \$1,000. Fla. Stat. §§ 119.10(2), 775.082(4)(a), 775.083(1)(d) (1995).

**12. Settlement, pros and cons.**

Settlement is neither likely nor advisable.

**E. Appealing initial court decisions.**

**1. Appeal routes.**

Appeal of a circuit court decision where rights under Chapter 119 are at issue are governed by the same rules of appellate procedure that govern other actions in Florida. An appeal from a circuit court decision relating to Chapter 119 would be to the appropriate District Court of Appeal. *See* Fla. R. App. P. 9.030(b).

**2. Time limits for filing appeals.**

The notice of appeal must be filed with the clerk of the circuit court within thirty days after entry of judgment or rendition of the order to be reviewed. Fla. R. App. P. 9.110(b).

**3. Contact of interested amici.**

Because court decisions on open records issues may have far-reaching consequences, press groups and others may have an interest in filing a friend-of-the-court brief in behalf of you request for open records. The Reporters Committee for Freedom of the Press frequently files friend-of-the-court briefs for open records issues being considered at the highest appeal level in the state.

**F. Addressing government suits against disclosure.**

Not addressed.

## Open Meetings

### I. STATUTE — BASIC APPLICATION.

#### A. Who may attend?

The Florida law opens government meetings to the public, with no restrictions on who may attend. Under the Sunshine Law, a meeting is either fully open or fully closed; there are no intermediate categories. *Zorc v. City of Vero Beach*, 722 So. 2d 891, 901 (Fla. 4th DCA 1998).

While there are no restrictions on who may attend open meetings, there is no public right to speak at the meetings. *Keesler v. Cmty. Mar. Park Assocs.*, 32 So. 3d 659 (Fla. 1st DCA 2010).

#### B. What governments are subject to the law?

The Government in the Sunshine Act subjects “[a]ll 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 . . .” to its requirements. Fla. Stat. § 286.011(1) (1995). *See City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971) (open meeting concept is applicable so as to bind every “board or commission” of the state, or of any county or political subdivision over which it has dominion or control); *Times Publ’g Co. v. Williams*, 245 So. 2d 470, 473 (Fla. 2d DCA 1971)(same). Florida’s Constitution provides that “any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed.” Fla. Const. Art. I, § 24 (b).

##### 1. State.

State agencies and authorities are subject to the Sunshine Act. *See* section B. above.

##### 2. County.

County agencies and authorities are subject subject to the Sunshine Act. *See* section B. above. In addition, the Sunshine Law has been specifically applied to the actions of county school boards. *See Finch v. Seminole Cnty. Sch. Bd.*, 995 So. 2d 1068, 1071 (Fla. 5th DCA 2008) (citing *Knox v. Dist. Sch. Bd. of Brevard*, 821 So. 2d 311 (Fla. 5th DCA 2002); *Mitchell v. Sch. Bd. of Leon Cnty.*, 335 So. 2d 354 (Fla. 1st DCA 1976)).

##### 3. Local or municipal.

Local and municipal agencies and authorities are subject to the Sunshine Act. *See* section B. above.

### C. What bodies are covered by the law?

#### 1. Executive branch agencies.

Because no chief executives at any governmental level constitute a “board or commission,” they are not subject to the requirements of section 286.011. For example, the Governor is not subject to the Sunshine Law when discharging his constitutional duties as chief executive officer. On the other hand, the law is applicable to the Governor and Cabinet when sitting as a board created by the Legislature, such as the State Board of Education or the Department of Natural Resources. In these circumstances, a board created by the legislature is subject to legislative “dominion and control.” *See Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA 1980), affirmed and remanded, 389 So. 2d 1181 (Fla. 1980) (application of the Sunshine Law to the parole commission does not violate separation of powers or infringe upon the clemency power of the executive branch). Similarly, the Sunshine Act does not apply to a mayor acting in his capacity as chief executive. A mayor is subject to the Act only when sitting as a member of a board or commission of a state agency. *See Op. Att’y Gen. Fla. 83-70* (1983) (if decision to authorize corrective work on a beautification project falls within the administrative functions of the mayor and would not come

before the city council for further action, discussions between individual member of the city council and the mayor would not be subject to the Act; if decision to authorize such work would come before the city council and could require the mayor to exercise his power to break tie votes, the mayor should not confer privately with a member of the city council regarding such matters).

The principles discussed thus far also apply to the office of city manager and other executive offices. *Cf.*, *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) (once city manager utilizes an advisory group to assist in making recommendations for position of chief of police, he, although a chief executive officer, has created a “board” to which the Act applies). *See also Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (committee appointed by president of university to solicit and screen applications for deanship is a “board or commission”; thus closing of meetings to the public is improper); *Op. Att’y Gen. Fla. 74-47* (1974) (city manager, who was the chief executive officer of a local governmental body, was not subject to the Sunshine Law so long as he did not act as “liaison” for board of directors or attempt to act in place of board members). *Compare Bennett v. Warden*, 333 So. 2d 97 (Fla. 3d DCA 1976) (president of a junior college was neither a “board” nor “commission” and meetings held by him with a fact-finding group are not subject to the Sunshine Law); *Cape Publ’ns Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985) (distinguishing *Krause*, *supra*, and holding that where city charter places sole responsibility for selection of police chief in city manager, committee formed to assist in fact-finding and given no decision-making function is not subject to the Sunshine Law).

The function of the judicial nominating commission is executive in nature, and thus it is not subject to the Act. *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977) (function of judicial nominating commission is executive in nature and mandate comes from the Florida Constitution and not from the Legislature, Governor or judiciary; thus, the commission is not subject to the Sunshine Law). *Cf. Judicial Nominating Comm. v. Graham*, 424 So. 2d 10 (Fla. 1982) (nominating commissions are part of the executive branch). Note, however, that Fla. Const. art. V, sec. 11 currently provides that the proceedings of the commissions and their records, but not their deliberations, shall be open to the public.

“If an individual is not already a member of a board or commission governed by the Sunshine Law, nothing about working on economic development projects or receiving proprietary information converts him or her into one.” *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

## 2. Legislative bodies.

In 1982 a lawsuit was filed in circuit court on behalf of 16 Florida newspapers against the House Speaker and the Senate President seeking a declaratory judgment as to whether the public may be excluded from legislative committee meetings. Petitioners claimed that private legislative meetings violate the federal and state constitutions, and state laws (including section 286.011), and the Legislature’s own rules. The order on the defendants’ motion to dismiss stated that the plaintiffs were entitled to a ruling under Chapter 86 as to the allegations of the complaint relating to the First Amendment of the United States Constitution, the corresponding provisions of the Florida Constitution, and Fla. Stat § 11.142.; however, the remaining provisions of law cited by the plaintiff, including section 286.011, were not applicable under the circumstances alleged in the complaint. *See Miami Herald Publ’g Co. v. Moffitt*, Case No. 82-84 (2d Cir. Leon Co., filed February 28, 1983).

The case was ultimately decided in *Moffitt v. Willis*, 459 So. 2d 1018 (Fla. 1984). In *Moffitt*, the Supreme Court granted the Legislative leaders’ petition to dismiss the civil action pending in the lower court on the basis that the circuit court lacked jurisdiction over the subject matter under the constitutional doctrine of separation of powers. The court held that the circuit court does not have jurisdiction to determine and declare the meaning and the application of the rules and

procedures of the Senate and House of Representatives, which, the court noted, was a purely legislative prerogative. Thus, the Supreme Court did not address the merits of the case, and did not directly reach the question of the applicability of section 286.011 to the Legislature.

However, in 1993, the Legislature amended the State Constitution expanding public records and meeting law to the Legislature and stating that “meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.” Art. I, sec. 24(b), Fla. Const. (1993).

## 3. Courts.

Provisions of section 286.011 do not apply to the judicial branch of government. *See Fla. Const. art. V, sec. 2(a)*. *See also, Op. Att’y Gen. Fla. 83-97* (1983) (discussing the applicability of section 286.011 to the judicial branch). However, the Florida courts have recognized a broad right of public access on non-statutory grounds. *Barron v. Fla. Freedom Newspapers Inc.*, 531 So. 2d 113 (Fla. 1988) (there is a strong presumption of public access to all trials). *Compare Miami Herald Publ’g Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982) (discussing the inherent power of courts to grant public access); *Miami Herald Publ’g Co. v. McIntosh*, 340 So. 2d 904 (Fla. 1977) (public should generally have unrestricted access to all judicial proceedings, but court has inherent power to control proceedings before it); *Cf. Gore v. State*, 573 So. 2d 87 (Fla. 3d DCA 1991) (trial court could properly refuse to exclude electronic media from courtroom even where defendant presented evidence that media’s presence would adversely affect his ability to testify).

Since grand juries have been characterized as an “arm of the judicial branch of government,” and Fla. Stat. section 905.24 specifically states that grand jury proceedings are secret, grand jury proceedings do not fall within the ambit of the Sunshine Law. *Op. Att’y Gen. Fla. 73-177* (1973). Hearings on certain grand jury procedural meetings are also closed. *In Re Grand Jury, Fall Term 1986*, 528 So. 2d 51 (Fla. 2d DCA 1988).

## 4. Nongovernmental bodies receiving public funds or benefits.

The statutory definition of “agency” includes “any other public or private agency, partnership, corporation or business entity acting on behalf of the State.” However, private organizations receiving state and/or federal funds may not fall under the Sunshine Law merely because of the receipt of public money. *See News & Sun Sentinel Company v. Schwab*, 596 So. 2d 1029 (Fla. 1992); *Quintana v. Cmty. P’ship for Homeless Inc.*, 651 So. 2d 1287 (Fla. 3d DCA 1995) (non-profit not subject to Sunshine Law); *Op. Att’y Gen. Fla. 78-161* (1978) (receipt of public funds by private non-profit corporation under contract with district mental health board, does not, standing alone, subject corporation to section 286.011); *Op. Att’y Gen. Fla. 74-22* (1974); *see also Op. Att’y Gen. Fla. 76-194* (1976) (Orlando-Orange County Industrial Board is not subject to the Sunshine Law, notwithstanding the receipt of contributions from governmental agencies).

## 5. Nongovernmental groups whose members include governmental officials.

Meetings of non-governmental groups whose members include public officials generally may not be subject to the requirements of the Sunshine Act. *Op. Att’y Gen. Fla. 76-194* (1976) (ex-officio membership of single county commissioner and city councilman on board of directors of non-governmental organization which receives public funds does not require board meetings to be open; however, use of such meetings as a device to avoid public meetings requirements, such as the discussion of matters which will be brought before a public board or commission may trigger application of the Sunshine Act). *See Op. Att’y Gen. Fla. 83-70* (1983) (city council member sitting on board of trustee of a non-profit corporation must excuse himself from meetings of the board or hold the board meetings in the sunshine in instances when the board discusses some matter which would be brought before the city council for action.)

## 6. Multi-state or regional bodies.

Neither the courts nor the attorney general have issued a statement on the application of section 286.011 to multistate or regional bodies.

## 7. Advisory boards and commissions, quasi-governmental entities.

An ad hoc advisory board, whose powers are limited to making recommendations to a public agency, possessing no authority to bind the agency in any way whatsoever, is nevertheless subject to the Sunshine Law. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *accord, Spillis, Candela & Partners Inc. v. Centrust Sav. Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988); *see also IDS Props. v. Town of Palm Beach*, 279 So. 2d 353 (Fla. 4th DCA 1973) (there is no “government by delegation” exception to the Sunshine Law; therefore, public agencies may not conduct the public’s business in secret through the use of an “alter ego”).

Advisory boards appointed to make recommendations are subject to dictates of the Sunshine Law. *Krause v. Reno, supra*, 366 So. 2d 1244; *Silver Express Co. v. Dist. Bd. of Tr. of Miami-Dade Cmty. Coll.*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee appointed by college’s purchasing director to consider proposals to provide flight training services was subject to the Sunshine Law, where committee’s function was to weed through various proposals and to determine which were acceptable); *Ruff v. Sch. Bd.*, 426 So. 2d 1015 (Fla. 2d DCA 1983) (Sunshine Law applies to an organizational meeting of a county school board sex education policy task force); *News-Press Publ’g Co. v. Carlson*, 410 So. 2d 546 (Fla. 2d DCA 1982) (meetings of an ad hoc internal budget committee of a county hospital are subject to the Sunshine Law); *Wood v. Marston, supra*, 442 So. 2d 934 (search-and-screen committee appointed by the University of Florida president to solicit and screen applications for deanship is a “board or commission” within provisions of Sunshine Law; reasoning that the committee performs a policy-based, decision-making function in deciding which applicants to reject from further consideration. *And see Dore v. Sliger*, No. 90-1850 (2d Cir. Leon Co., July 11, 1990) (faculty of university law school prohibited from conducting secret ballots on personnel hiring matters). *But see Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976) (fact-finding advisory committee appointed by a university president to advise him on employee working conditions is not subject to section 286.011; relying on the committee’s fact-finding nature and remoteness from the decision making process); *Cape Publ’ns Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985) (a committee formed for fact-finding, and not given any decision-making function is not subject to section 286-911); *Op. Att’y Gen. Fla. 81-51* (1981) (meetings of a bid evaluation team or contract negotiation team of the Department of Health and Rehabilitative Services are not subject to the Sunshine Law when the teams consist solely of departmental staff and have no power to bind the department).

Quasi-judicial hearings, authorized by and at the direction of a board or commission are required to be held in public. *See Canney v. Bd. of Pub. Instruction*, 278 So. 2d 26 (Fla. 1973) (there is no “quasi-judicial” exception under the Sunshine Law allowing closed hearings during the deliberative process); *Occidental Chem. Co. v. Mayo*, 351 So. 2d 336, 341 n.7 (Fla. 1977). *But see State of Fla. Dep’t of Pollution Control v. State Career Serv. Comm’n*, 320 So. 2d 846 (Fla. 1st DCA 1975) (deliberations of Career Service Commission are exempt from the Sunshine Laws as such proceedings are “quasi-judicial” deliberations). [*See also, supra*, I.C.1.].

## 8. Other bodies to which governmental or public functions are delegated.

When public officials delegate de facto authority to act on their behalf in preparation of plans on which foreseeable action will be taken, persons delegated that authority stand in the shoes of the public officials insofar as application of Sunshine Law is concerned. *News Press Pub. Co. Inc. v. Carlson*, 410 So. 2d 546 (Fla. 2d DCA 1982).

The issue of whether such authority has been delegated often arises with regard to staff meetings. Meetings of staff of public boards or

commissions are not ordinarily subject to section 286.011. *Inf. Op. Att’y Gen. Fla. to Mr. William Candler* (December 17, 1974). *Accord Occidental Chemical Co. v. Mayo, supra*, 351 So. 2d 336; *Op. Att’y Gen. Fla. 81-51* (1981) (meetings of staff to evaluate proposed service bids and to negotiate proposed contracts with the winning bidder are not subject to the Sunshine Law). *See also Godheim v. City of Tampa*, 426 So. 2d 1084 (Fla. 2d DCA 1983) (negotiation meetings conducted by city staff members with two competing vendors were not subject to the Sunshine Law).

However, when a member of the staff ceases to function in his capacity as a staff-member of the board or commission, and is appointed to a committee which is delegated authority normally within the governing body, he loses his identity as staff while operating on that committee and is accordingly included within the Sunshine Law. *News Press Publ’g Co. v. Carlson, supra*, 410 So. 2d 546 (formalized budget committee of a hospital district responsible for preparing a budget and submitting it to the district’s governing board for approval is required to meet in the sunshine). *See also Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (section 286.011 applies to a staff search committee for a law school dean since the committee performs a decision-making function in screening applicants).

In *Memorial Hospital-West Volusia Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 1999) (*Memorial I*), the court held that, absent a statutory exclusion, private not-for-profit corporations to which operation of public hospital facilities have been transferred are acting on behalf of a state agency in performing and carrying out obligations under their agreement and, therefore, must comply with open records and meetings laws. Further, the exclusion that was created for records and meetings of corporations that lease public hospitals if certain conditions are met could not be applied retroactively. *Mem’l Hosp.-West Volusia Inc. v. News-Journal Corp.*, 784 So. 2d 483 (Fla. 2001) (*Memorial II*).

## 9. Appointed as well as elected bodies.

The Sunshine Law is applicable equally to elected and appointed bodies. *Op. Att’y Gen. Fla. 73-223* (1973).

### D. What constitutes a meeting subject to the law.

#### 1. Number that must be present.

Ordinarily section 286.011 applies to “two or more members” of a board or commission. *See Deerfield Publ’g Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988) (requisite to application of the Sunshine Law is a meeting of two or more public officials); *City of Sunrise v. News & Sun Sentinel Co.*, 542 So. 2d 1354 (Fla. 4th DCA 1989); *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973); *City of Miami Beach v. Berns, supra*, 245 So. 2d at 41. *See also Fla. STOP Inc. v. Goodrum*, No. 80-3775 (Fla. 10th Cir. Ct. Polk County, 1980), *aff’d*, 415 So. 2d 1372 (Fla. 2d DCA 1982) (section 286.011 is not applicable to a single member of a housing authority appointed to gather information about sites for the authority). However, in order to assure public access to decision-making processes of boards and commissions, and in order to prevent circumvention of the statute, the presence of two governmental representatives might not always be necessary in order for a violation of the law to occur. *See Op. Att’y Gen. Fla. 74-294* (1974) (a single member of a board with delegated authority to act on behalf of the board cannot negotiate for lease in secret). *Cf. Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (“[t]he statute should be construed so as to frustrate all evasive devices”).

#### a. Must a minimum number be present to constitute a “meeting”?

In general, “two or more members” is required. *See* section D.1. above.

#### b. What effect does absence of a quorum have?

There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to Fla. Stat. § 286.011.

## 2. Nature of business subject to the law.

### a. “Information gathering” and “fact-finding” sessions.

The attorney general has opined that “information gathering” or “fact finding” sessions of a public board or commission are subject to the Sunshine Act. *See* Op. Att’y Gen. Fla. 74-273 (1974) (“fact-finding” discussions between two or more city council members and a planning firm, are subject to the Sunshine Law). However, two Florida appellate courts have concluded that where decision-making authority is not specifically delegated and board or committee members merely serve an advisory or fact-finding role, the Sunshine Law does not apply. *Molina v. City of Miami*, 837 So. 2d 462 (Fla. 3d DCA 2003); *Knox v. Dist. School Bd. of Brevard*, 821 So. 2d 311 (Fla. 5th DCA 2002).

The Sunshine Law also applies to investigative inquiries of public bodies. Op. Att’y Gen. Fla. 74-84 (1974). The fact that a meeting concerns alleged violations of laws or regulations does not remove it from the scope of the law. *Canney v. Bd. of Pub. Instruction*, 278 So. 2d 260 (Fla. 1973). Moreover, under the holding of *Berns*, the fact that privileged or confidential information may or will be discussed during the course of the meeting does not serve to exempt such meeting from the scope of the Sunshine Law.

### b. Deliberations toward decisions.

The Sunshine Law may extend to discussions and deliberations as well as to formal action taken by a public body. Accordingly, the law is applicable to any gathering where the members deal with some matter on which *foreseeable action* will be taken by a board or commission of a state, county, or municipal agency. *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969) (public has inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made); *Times Publ’g Co. v. Williams*, 222 So. 2d 470 at 473 (Fla. 2d DCA 1969) (it is the entire *decision-making process* that the legislature intended to affect by the enactment of the statute before us; every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action).

Even gatherings such as luncheon meetings, inspection trips, bus tours, retreats, social functions, phone calls, and written memoranda may be held violative of the Sunshine Law if attendant members of a public board deal with a matter on which foreseeable action may be taken. Accordingly, the Attorney General’s office discourages “luncheon meetings” of public boards whenever possible. *See* Op. Att’y Gen. Fla. 71-159 (1971); *Finch v. Seminole Cnty. Sch. Bd.*, 995 So. 2d 1068, 1072-73 ((Fla. 5th DCA 2008) (conduct of fact-finding bus tour taken by school board members constituted violation of Sunshine Law, due to the fact board had decision-making authority, was gathered in a confined space, and had opportunity to make decisions outside of public scrutiny, but violation was cured by full, open, and independent public hearings).

Telephone conversations between members of a public body subject to the Sunshine Law do not constitute illegal meetings *per se*. However, if such conversations are held to discuss public business in a place inaccessible to members of the public and press for the specific purpose of avoiding public scrutiny, section 286.011 will apply. Op. Att’y Gen. Fla. 71-32 (1971); *see also* Op. Att’y Gen. Fla. 75-59 (1975).

The use of memoranda to conduct city business may violate the Sunshine Act. For example, if a city commissioner initiated a memorandum reflecting his or her thoughts on a given subject with writing space appended for other members to concur or disapprove, and then placed the memorandum in an agreed upon receptacle for gathering the signatures at completion, the substance of the memorandum would become an official action. This procedure was said to violate the Sunshine Law despite the absence of a “meeting” between two or more members. Inf. Op. Att’y Gen. Fla. to John J. Blair (June 29, 1973). It is permissible for a school board member to prepare and circulate an informational memorandum or position paper to other

board members, however, responsive memoranda or comments may not be solicited or supplied in circumvention of the open meetings requirement of section 286.011, Florida Statutes. Op. Att’y Gen. Fla. 96-35, (May 17, 1996).

Similarly city managers and other executive administrative officers who serve public bodies should refrain from contacting each member of the public body that they serve in order to ascertain the member’s vote on a particular matter pending before such body. *See* Op. Att’y Gen. Fla. 75-59 (1975). *See also Blackford v. Sch. Bd.*, 375 So. 2d 578 (Fla. 5th DCA 1979) (scheduled successive meeting between the school superintendent and individual members of the school board were subject to the Sunshine Law and amounted to de facto meetings of the board in violation of section 286.011); *but see Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) (informational briefings for individual members of Board of County Commissioner did not violate the Sunshine Law).

## 3. Electronic meetings.

### a. Conference calls and video/Internet conferencing.

Telephone conversations between members of a public body subject to the Sunshine Law do not constitute illegal meetings *per se*. However, if such conversations are held to discuss public business in a place inaccessible to members of the public and press for the specific purpose of avoiding public scrutiny, section 286.011 will apply. Op. Att’y Gen. Fla. 71-32 (1971); *see also* Op. Att’y Gen. Fla. 75-59(1975).

### b. E-mail.

E-mail is subject to the Sunshine Law if the communication is used to conduct public business. A January 2009 Final Report by the Commission on Open Government Reform stated that “the use of private computers and personal e-mail accounts to conduct public business does not alter the public’s right of access to the public records maintained by those computers or transmitted by such accounts.” However, an e-mail from one council member to another is not subject to the Sunshine Law where it merely communicates factual information and does not result in the exchange of council members’ comments or responses on subjects requiring council action. Op. Att’y Gen. 2001-20 (2001).

In *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010), the Florida Supreme Court ruled that the City of Sarasota did not violate the Sunshine Law in connection with e-mail discussions that took place during bond validation efforts. Any violations of the Sunshine Law committed in e-mail discussions were cured by the holding of public meetings.

### c. Text messages.

While no formal decision has been made, the Office of the Attorney General issued an Informal Advisory Opinion on June 03, 2009 suggesting that text messages that are some way connected to “official business” would be subject to disclosure. The opinion further stated that it is well settled “that no means should be used to circumvent or evade the requirements of the Public Records Law.” However, officially the office declined to render a formal opinion regarding text messages sent or received during workshops or official meetings.

### d. Instant messaging.

Not addressed, *but see* section 3.c. above.

### e. Social media and online discussion boards.

The use of an “online bulletin board” for discussion of issues that may come before a water management district basin board has been considered in an Advisory Legal Opinion by the Florida Attorney General. Op. Att’y Gen. Fla. 02-32 (2002); *see also* Op. Att’y Gen. Fla. 08-07 (2008) (“The use of a website blog or message board to solicit comment from other members of the board or commission by

their responses on matters that would come before the board would trigger the requirements of the Sunshine Law . . . [and] amount to a discussion of public business . . . without appropriate notice, public input, or statutorily required recording of the minutes of the meeting.”). The bulletin board discussions addressed occurred “over an extended period of days or weeks.” Op. Att’y Gen. Fla. 02-32 (2002). “In the absence of any proximity in time between the discussions of the basic board members and the public’s ability to participate in these discussions,” such discussions were a violation of Fla. Stat. section 286.011. *Id.*; see Informal Op. Att’y Gen. Fla. (Mar. 23, 2006) (discussing Op. Att’y Gen. Fla. 02-32 in regards to town’s proposal to conduct public meetings via an electronic discussion board).

The Attorney General has advised, however, that the use of electronic media to conduct workshops and informal meetings was acceptable where the meetings were noticed and conducted a certain time and the public was afforded an opportunity to participate during the meeting. Op. Att’y Gen. Fla. 01-66 (2001). The Attorney General has indicated that “[a]ccess must be available not only to those members of the public possessing a computer with internet access, but also to those who may not have access to the Internet. Op. Att’y Gen. Fla. 08-65 (2008). Computers with internet access must be made available to the public in designated places within the entity’s jurisdictional boundaries. See *id.*; Op. Att’y Gen. Fla. 01-66 (2001). Operating assistance must also be provided. Op. Att’y Gen. Fla. 08-65 (2008). The text of such online discussions would be public records, and minutes must be promptly prepared and recorded. See *id.*

## E. Categories of meetings subject to the law.

### 1. Regular meetings.

#### a. Definition.

There is no specified definition for a “regular” meeting. The Sunshine Law extends to formal action taken by a board or commission as well as less formal the discussions and deliberations. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to Fla. Stat. § 286.011. Rather, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. *Hough v. Stemberge*, 278 So. 2d 288 (Fla. 3d DCA 1973); see also *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Bd. of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

#### b. Notice.

The Sunshine Law requires that boards subject to the law provide “reasonable notice” of all meetings. See Fla. Stat. § 286.011(1) (1995).

#### (1). Time limit for giving notice.

Although prior to 1995, section 286.011 did not specifically require a public board to give public notice of a governmental meeting, the courts have long interpreted the statute to mandate reasonable notice as a practical matter. *Hough v. Stemberge*, 278 So. 2d 288 (Fla. 3d DCA 1973). Furthermore, Florida’s Constitution requires that public meetings be “noticed to the public.” Art. 1, sec. 24(b). The time frame for giving notice is a “reasonable” time standard. See Op. Att’y Gen. Fla. 73-170 (1973) (reasonable public notice is variable, but must always afford a reasonable time for interested persons to appear); Op. Att’y Gen. Fla. 72-400 (1972) (directing regulatory boards of the Department of Professional and Occupational Regulation to give reasonable and ample notice to public and press of all meetings); Op. Att’y Gen. Fla. 80-78 (1980) (reasonable notice mandatory despite lack of specific statutory requirements). *Accord Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985). See *Rhea v. City of Gainesville*, 574 So. 2d 221 (Fla. 1st DCA 1991) (complaint alleging notice given to media no later than 1:35 P.M. of special meeting at 3:00 P.M. was not sufficient notice stated a sufficient cause of action that Sunshine Law had been violated).

### (2). To whom notice is given.

The Florida Attorney General suggests the use of press releases and/or phone calls to the wire services and other media as a highly effective means of notice. On matters of critical public concern such as rezoning, budgeting, taxation, and appointment of public offices, advertising in local newspapers of general circulation is appropriate. Any board or commission subject to Chapter 120, the Administrative Procedure Act, must consider the Act in conjunction with section 286.011 whenever a notice question arises. See *Fla. Parole & Probation Comm’n v. Baranks*, 407 So. 2d 1086 (Fla. 1st DCA 1982) (notice of meeting published in the Fla. Admin. Weekly is sufficient public notice under section 298.011); Op. Att’y Gen., 99-53 (1999) (meetings of a homeowners’ association architectural review committee to review and approve applications for county building permits must be noticed and open to the public at large and not merely to association members).

### (3). Where posted.

Proper posting of notice will depend on the facts and circumstances of each case. In each circumstance, the agency must give notice at such time and in such a manner as to enable the general public (and the media) to attend the meeting. See Ops. Att’y Gen. Fla. 04-44 (2004), 80-78 (1980), and 73-170 (1973); see also *Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991). In some cases, the posting of the notice in a designated area may be sufficient. In other cases, newspaper publication may be necessary.

### (4). Public agenda items required.

Notice should contain an agenda; however, if no agenda is available, subject summations might be used. A specific requirement that each item discussed by a public agency be noticed by a published prior agenda was rejected in *Hough v. Stemberge*, *supra*, because it would effectively preclude access to meetings by members of the general public who wish to address specific issues. See also, *Law & Information Services v. City of Rivera Beach*, 670 So. 2d 1014 (Fla. 4th DCA 1996) (to impose a requirement restricting every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the Legislature); *Yarbrough v. Young*, *supra*, 462 So. 2d 515 (posted agenda unnecessary; public body not required to postpone meetings due to inaccurate press release not part of official notice); Op. Att’y Gen. Fla. 75-305 (1975) (Sunshine Law does not require each item of business to be placed on agenda as a precondition to board consideration at a properly noticed meeting).

### (5). Other information required in notice.

Notice should contain the time and place of the meetings. See *Law & Information Servs. Inc. v. City of Riviera Beach*, *supra*, (under Sunshine Law, public is entitled to notice of when and where governmental meeting is to be held, and that when held, such meetings are to be conducted openly). The only statutory informational notice requirement is advice that if the person decides to appeal a board decision, he may need to insure that a verbatim record of the proceedings is made. Fla. Stat. § 286.0105 (1991). See Op. Att’y Gen. Fla. 81-6 (1981).

### (6). Penalties and remedies for failure to give adequate notice.

A showing that section 286.011 has been violated constitutes irreparable public injury, thus voiding, pursuant to Fla. Stat. section 286.001(1) any action taken at the meetings. See *Port Everglades Auth. v. Int’l Longshoremen’s Ass’n*, 652 So. 2d 1169 (Fla. 4th DCA 1995) (“the principle that a Sunshine Law violation renders void a resulting official action does not depend on a finding of intent to violate the law or resulting prejudice. Once the violation is established, prejudice is presumed.”); *Town of Palm Beach v. Gradison*, 396 So. 2d 473 (Fla. 1974) (absence of notice of a meeting to the public or press is a potential violation of law); Op. Att’y Gen. Fla. 74-273 (1974). If a meeting held without notice is held to be a violation of the Sunshine Law, public officials who attended such a meeting may be subject to the fines or

criminal penalties imposed by section 286.011. See discussion below relating to such penalties at IV.C.10 and 11.

### c. Minutes.

Section 286.011 specifically requires the minutes of a meeting of any board or commission to be promptly recorded and open to public inspection. Sound or tape recordings may be used to record all of the proceedings before a public body, however written minutes of such meetings must be promptly recorded for public inspection as required by section 286.011. See also Op. Att’y Gen. Fla. 75-45 (1975); Op. Att’y Gen. Fla. 74-294 (1974).

#### (1). Information required.

The term “minutes” in § 286.011, Fla. Stat., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting. See Op. Att’y Gen. Fla. 82-47 (1982).

#### (2). Are minutes public record?

See Section E.1.c. above; see also *Grapski v. City of Alachua*, 31 So. 3d 193, 198-200 (Fla. 1st DCA 2010) (stating that minutes must be available for public inspection and declaring City’s approval of certain minutes null and void as a result of its failure to open the minutes to public inspection in a timely and reasonable manner in violation of Fla. Stat. section 286.022(2)).

### 2. Special or emergency meetings.

The Sunshine Law does not prescribe particular rules for special or emergency meetings. Such meetings must therefore comply with the general requirements of the Sunshine Law. See Part E above.

### 3. Closed meetings or executive sessions.

#### a. Definition.

In 1993, the Legislature created a narrow exception to the Sunshine Law permitting a governmental entity, its chief executive and attorney to meet in private if the entity is a party to pending litigation and the attorney desires advice concerning settlement negotiations or strategy. Fla. Stat. § 286.011(8).

#### b. Notice requirements.

The agency must give “reasonable public notice of the time and date of the session and the names of the persons who will be attending the session.” Fla. Stat. § 286.011(8)(d). See Part E above.

#### c. Minutes.

##### (1). Information required.

The entire session must be recorded by a certified court reporter. The reporter must record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session can be off the record. The court reporter’s notes must be fully transcribed and filed with the entity’s clerk within a reasonable time after the meeting. Fla. Stat. § 286.011 (8)(c).

##### (2). Are minutes a public record?

The transcript of the session is made public upon conclusion of the litigation. Fla. Stat. § 286.011(8)(e).

#### d. Requirement to meet in public before closing meeting.

The session must commence at an open meeting at which the person chairing the meeting must announce the commencement and estimated length of the session and the names of the persons attending. Fla. Stat. § 286.011(8)(e). At the conclusion of the session, the meeting shall be reopened and the person chairing the meeting must announce the termination of the session. *Id.*

### e. Requirement to state statutory authority for closing meetings before closure.

The entity’s attorney must advise the entity at a public meeting that he or she desires advice concerning pending litigation. Fla. Stat. § 286.011(8)(a).

### f. Tape recording requirements.

There are no tape recording requirements. However, as described above, the entire session must be transcribed by a court reporter.

## F. Recording/broadcast of meetings.

Although the Sunshine Law does not explicitly allow for the video recording of public meetings, refusal to allow such recording violates the “statute’s spirit, intent, and purpose” if the recording is non-disruptive. *Pinellas Cnty. Sch. Bd. v. Suncam Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002).

### 1. Sound recordings allowed.

Members of the public attending a meeting open pursuant to section 286.011 may make a sound recording of such meeting. See Op. Att’y Gen. Fla. 77-122 (1977) (any rule prohibiting the use of silent or non-disruptive tape recording devices is unreasonable and arbitrary and is, accordingly, invalid, thus fire control district may not prohibit a citizen from tape recording public meetings).

### 2. Photographic recordings allowed.

Reasonable rules and policies which ensure orderly conduct of a public meeting and require orderly behavior on the part of those persons attending may be adopted by any public agency whose meetings come within the purview of the Sunshine Law. As for the use of cameras by newsmen and other individuals, so long as their presence is not disruptive of the conduct of the meeting, they should be, and traditionally are, allowed since they aid in making an accurate report to members of the public who could not be present at that particular meeting. Government-in-the-Sunshine Manual p. 26 (1988).

## G. Are there sanctions for noncompliance?

For violations of the open meetings law, officials are guilty of a non-criminal infraction, which is punishable by a fine of less than \$500. Public officials who knowingly violate the open meetings law by attending a meeting held in violation of the law are guilty of a misdemeanor. Plaintiffs may recover attorneys’ fees against a public body. Fla. Stat. § 286.011(3-7) (2006).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open meetings statute.

Because the Sunshine Law is enacted for the public benefit, it should be construed liberally to give effect to its public purposes, and its exemption should be narrowly construed. *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998). In addition, Florida’s Constitution, Art. I, sec. 24 (c), a self-executing provision, requires that each exemption statute specify the public necessity justifying it and is no broader than necessary to accomplish the stated purpose of the law. See *Halifax Hosp. Med. Ctr. v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (striking down Fla. Stat. section 395.3035(4), which exempts portions of public hospital board meetings during which strategic plans are discussed, under this constitutional provision as being facially overbroad because it did not define “strategic plan” or limit the exemption to critically confidential portions of strategic meetings).

### 1. Character of exemptions.

#### a. General or specific.

Exemptions to the Sunshine Law are specific rather than general in that all exemptions must be provided for by statute. The Sunshine

Law itself contains no general provision for closure in the “public interest.” An exemption from Fla. Stat. section 119.07(1) does not imply an exemption from or exception to section 286.011. Such an exception to or exemption from section 286.011 must be expressly provided. Fla. Stat. section 119.07(5). See discussion below at II.B. for other statutes which provide for the closure of certain meetings and II.C., Court Mandated Exclusions, *infra*.

#### b. Mandatory or discretionary closure.

Neither the courts nor the Legislature have addressed whether exemptions are mandatory; thus this issue will depend on the language of the particular statutory exemption. Most of the exemptions seem to be mandatory in that they state that a meeting “shall” be exempt from the provisions of section 286.011. See, e.g., Fla. Stat. §§ 112.324(1), 240.209(2) (1991). Other exemptions are triggered when a person within the class of individuals sought to be protected requests that the meeting be closed. See Fla. Stat. § 228.093(3)(d) (1991).

### 2. Description of each exemption.

1. *Exempt Proceedings.* The basic statutory exemptions include: Fla. Stat. § 112.324(6) (1991) (exempting certain proceedings of the Commission on Ethics concerning complaints of statutory violations of section 112 by public officers and employees); Fla. Stat. § 286.011(8) (1993) (providing exception for certain attorney-client meetings of governmental entities; see, *infra*, II.B.4); Fla. Stat. § 106.25(5) (1995) (exempting certain proceedings of elections commission); Fla. Stat. § 39.408 (1995) (exempting certain hearings in juvenile dependency cases); Fla. Stat. § 240.209(2) (1995) (exempting the search committee activities for the selection of a Board of Regents Chancellor up to the point of transmitting the list of nominees); Fla. Stat. § 447.205(10) (1995) (exempting the deliberation of the Public Employees Relations Commission); and Fla. Stat. § 402.165(8)(a) (1995) (exempting all matters before the Human Rights Advocacy Committees concerning abuse or deprivation of rights of an individual client or group of clients of the department subject to the protections of the section); Fla. Stat. § 395.3036 (1998) (exempting meetings of the governing boards of private corporations that lease public hospitals or other public health care facilities).

2. *Federal Programs.* Section 286.011 (Sunshine Law) may be inapplicable to local officials when they are serving on executive committees of public bodies such as community action agencies created by and subject to federal law. Op. Att’y Gen. Fla. 71-191 (1971). See also, Op. Att’y Gen. Fla. 84-16 (1984); but see, *Freeman v. Time Publ’g Co.*, 969 So. 2d 427 (Fla. 2d DCA 1997) (school board enjoined from holding closed-door meetings to discuss issues relating to continuing compliance with federal desegregation program).

3. *Trade Secrets.* Any information relating to secret processes, methods of manufacture or production which may be required, ascertained, or discovered by inspection or investigation, shall not be disclosed in public hearings. Fla. Stat. § 403.111 (1995).

4. *Litigation.* Section 286.011 (Sunshine Law) is applicable to meetings between a governmental agency and its attorney when such meetings are held to discuss proposed or pending litigation. See *Neu v. Miami Herald Publ’g Co.*, 462 So. 2d 821 (Fla. 1985) (Sunshine Law applies to meetings between city council and a city attorney held for purpose of discussing settlement of litigation; legislative regulation of such communications does not usurp constitutional authority of the Supreme Court to regulate the practice of law, and is not at odds with the Code of Professional Responsibility’s provision for attorney-client confidentiality). Accord, *City of Miami Beach v. Berns*, 245 So. 2d at 40-41 (citing *Doran, supra*, and holding city council cannot hold informal executive sessions from which the public is excluded to discuss pending litigation); *Bd. of Pub. Instruction of Broward Cnty. v. Doran*, 244 So. 2d 693 (whether Fla. Stat. sec 286.011 should authorize secret meetings for privileged matter is the concern of the Florida Legislature and

unless the Legislature amends the statute, it should be construed as containing no exceptions).

*Consultation with Attorneys; Consultants.* In 1993, the Legislature created a narrow exception permitting a governmental entity, its chief executive and attorney to meet in private if the entity is a party to pending litigation and the attorney desires advice concerning settlement negotiations or strategy. Fla. Stat. § 286.011(8). Staff of Fla. H.R. Comm. On Gov’t Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement 2 (Fla. State Archives) (hereinafter “Final Staff Analysis”); *Sch. Bd. of Duval County v. Fla. Publ’g Co.*, 670 So. 2d 99 (Fla. 1st DCA 1996). This subsection of the Sunshine Law requires that: (a) the “attorney advise the entity at a public meeting that he desires advice concerning litigation”; (b) the subject matter of the meeting “be confined to settlement negotiations or strategy sessions related to litigation expenditures”; (c) the entire session be “recorded by a certified court reporter” making record of the time, all discussions and proceedings, the names of all persons present, and the names of all persons speaking; (d) the entity give “reasonable public notice of the attorney client session and the name of persons who will be attending the session” which must take place during an open meeting; and (e) the transcript “be made part of the public record upon conclusion of the litigation.” 286.011(8). It is important to note that this provision does “not create a blanket exception to the open meeting requirement for all meetings between a public board or commission and its attorney” but rather outlines an exception that is “narrower than the attorney-client communications exception recognized for private litigants.” Op. Att’y Gen. Fla. 95-06, 4 (1995); see also *City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995) (“the legislature intended that a strict construction be applied”); *Sch. Bd. of Duval County, supra* (inclusion of consultants to discuss settlement negotiations is prohibited); *Freeman v. Times Publ’g Co., supra* (school board permitted to close meeting to discuss strategies related to litigation expenditures but must discuss compliance with desegregation mandate in the open); *Zorc v. City of Vero Beach, supra*, (only those person listed in the statutory exemption are authorized to attend closed attorney-client session; attendance of city clerk, deputy clerk, airport director, public works director, and city engineer was improper). However, when counsel takes formal action beyond the scope of mere strategy, an open meeting is required. *Id.*

5. *Labor negotiations.* Meetings relating to collective bargaining must be open unless statutorily exempt. Cf., *State ex rel. Crago v. Hunter*, No. 75-515 (Fla. 19th Cir. Ct. 1975) (school board must conduct collective bargaining negotiations so that a person of reasonable experience and average intelligence can comprehend what is transpiring; this does not include conducting public bargaining sessions through written proposals and references which were not available to the public and representatives of the media present at such bargaining sessions).

Under the Public Employee Collective Bargaining Act, all discussions between the chief executive officer of a public employer and the legislative body of a public employer relative to collective bargaining are exempt from the Sunshine Law. Fla. Stat. § 447.605(1) (1995). In addition, all discussion between the Department of Administration and the Governor, and between the Department and the Administration Commission, or between any of their respective representatives, relative to collective bargaining are exempt from the provision of Fla. Stat. § 286.011. § 110.201(4) (1995). See Op. Att’y Gen. Fla. 85-99 (1985) (a duly appointed labor negotiating committee or its chairman, of a municipality having no city administrator, city manager, or other chief executive officer, comes within the definition of “chief executive officer of the public employer” for purposes of section 447.605(1)).

The section 447.605 exemption applies only in the context of actual and impending collective bargaining negotiations and does not apply to other, non-exempt topics discussed during the course of the same meeting. See *City of Fort Meyers v. News-Press Publ’g Co.*, 12 F.L.W. 2508 (Fla. 2d DCA 1987) (section 286.011 applies to bargaining pro-

cess after impasse in bargaining has been declared). In addition, pursuant to § 447.605(2), collective bargaining negotiations between a chief executive officer and a bargaining agent are not exempt from section 286.011. See generally *Op. Att’y Gen. Fla. 75-48* (1975) (the exemption does not allow private discussions of a proposed “mini-PERC ordinance” or discussion regarding the stance that a public body intends to adopt in regard to unionization and/or collective bargaining). See also, *Inf. Op. Att’y Gen. Fla. to Don Slesnick* (January 12, 1977) (the exemption at section 447.605(1) applies to meetings between a public employer and its negotiator to discuss whether or not to accept a special master’s recommendation); *News-Press Publ’g Co. v. City of Fort Myers*, No. 85-6733CA (Fla. 20th Cir. Ct. June 3, 1986) (legislature has divided Sunshine Law policy on collective bargaining for public employees in two: when the public employee is meeting with its own side and when it is meeting with the other side; in the former situation, it is required to comply with the law).

6. *Students Discipline*. If a student or his guardian wishes to challenge material found in the student’s records, hearings held pursuant to the challenge are exempt from, the requirements of Fla. Stat. § 286.011, § 228.095(d) (1991). See also, *Marston v. Gainesville Sun Publ’g Co.*, 341 So. 2d 783 (Fla. 1st DCA 1976) (exempting meetings of the Honor Court at the University of Florida from section 286.011, on the ground that such body considers privileged or confidential documents, *i.e.*, student disciplinary records).

7. *Attorney Discipline*. The grievance committee meetings of the Florida Bar are private. Preventing the public from attending such meetings does not violate section 286.011. *Fla. Bar v. Comm.*, 2005 WL 2509186 (Fla. 2005).

#### **B. Any other statutory requirements for closed or open meetings.**

See section A. above.

#### **C. Court mandated opening, closing.**

The judiciary has no constitutional or statutory authority to create general “public interest” exemptions to the open meetings requirement. *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821 (Fla. 1985). See *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (1969); *City of Miami Beach v. Berns*, 245 So. 2d 38. The *Neu* opinion was rendered in the context of governmental meetings with agency attorneys, and it overrules *Times Publishing Co. v. Williams*, *supra*. Cf. *Wait v. Fla. Power & Light Co.*, 371 So. 2d 420 (Fla. 1979) (courts may not create exemptions to Public Records Law).

### **III. MEETING CATEGORIES — OPEN OR CLOSED.**

#### **A. Adjudications by administrative bodies.**

There is no provision relating to the application of the Sunshine Act to administrative bodies. The application of the Act to such bodies probably will depend on whether the administrative body in question acts as an arm of the legislature, or the executive branch and is an agency as defined by the statute. See discussion above at I.B. and C.

##### **1. Deliberations closed, but not fact-finding.**

See discussion above. There is no provision relating to the application of the Sunshine Act to administrative bodies. The application of the Act to such bodies probably will depend on whether the administrative body in question acts as an arm of the legislature, or the executive branch and is an agency as defined by the statute. See discussion above at I.B. and C.

##### **2. Only certain adjudications closed, *i.e.* under certain statutes.**

See discussion above. There is no provision relating to the application of the Sunshine Act to administrative bodies. The application of the Act to such bodies probably will depend on whether the administrative body in question acts as an arm of the legislature, or the execu-

tive branch and is an agency as defined by the statute. See discussion above at I.B. and C.

#### **B. Budget sessions.**

Because there is no statutory exemption from section 286.011 for budget sessions of a public agency, such sessions presumably fall within the purview of the Sunshine Act. See *News-press Co. v. Carlson*, 410 So. 2d 546 (Fla. 2d DCA 1982). Workshop sessions are subject to the Sunshine Law. See *e.g.*; *School Bd. of Alachua County*, 661 So. 2d 331 (Fla. 1st DCA 1995).

#### **C. Business and industry relations.**

Because there is no statutory exemption from section 286.011 for governmental meetings relating to business and industry relations, such meetings must be held in accordance with the Sunshine Act.

#### **D. Federal programs.**

See discussion above at II.B.2.

#### **E. Financial data of public bodies.**

Because there is no statutory exemption from section 286.011 for meetings of a public board or commission at which financial data of public bodies is discussed, such meetings must be held in accordance with the Sunshine Act.

#### **F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

See discussion above at II.B.3.

#### **G. Gifts, trusts and honorary degrees.**

There is no Florida law governing the relationship between the open meetings requirement of section 286.011 and gifts, trusts, and honorary degrees.

#### **H. Grand jury testimony by public employees.**

Grand jury proceedings are exempt from the Sunshine Law by virtue of their characterization as an arm of the judicial branch of government. See Fla. Stat. § 905.24 (1995) (grand jury proceedings are secret). There are no judicial decisions or attorney general opinions suggesting that this general exemption does not apply where a public employee testifies before a grand jury.

#### **I. Licensing examinations.**

The application of open government laws to licensee examinations is addressed in the context of public records, rather than open meetings, presumably because most examinations are written and not oral. Pursuant to Fla. Stat. § 119.07(3)(a) (1995), questions and answer sheets of examinations administered by governmental agencies for purposes of licensure, certification or employment are exempt from the public records requirements.

#### **J. Litigation; pending litigation or other attorney-client privileges.**

See discussion above at II.B.4.

#### **K. Negotiations and collective bargaining of public employees.**

See discussion above at II.B.5.

#### **L. Parole board meetings, or meetings involving parole board decisions.**

The Parole and Probation Commission is subject to the Sunshine Law. *Turner v. Wainwright*, 379 So. 2d 148, *aff’d*, 389 So. 2d 1181 (Fla. 1980) (the application of section 286.011 to meetings of the parole commission held to revoke paroles did not violate clemency prerogatives of the executive branch). Compare Fla. Stat. § 947.06 (1987), which appears to require that such meetings be open to the public.

### M. Patients; discussions on individual patients.

There is no relevant statutory exemption from section 286.011 for discussions relating to patients; rather, open government provisions relating to patients are stated in terms of exemptions to the public records law. See Fla. Stat. § 395.017(3), (4) and (6) (1995) (patient records have a privileged and confidential status. . . .).

### N. Personnel matters.

#### 1. Interviews for public employment.

There is no statutory exemption for interviews for public employment, nor have there been any judicial or attorney general decisions rendered on this issue.

#### 2. Disciplinary matters, performance or ethics of public employees.

Meetings of a public board or commission which relate to the discipline of a public employee must be open to the public pursuant to section 286.011. See *Times Publ'g Co. v. Williams*, 222 So. 2d at 474 (hearings relating to charges of misconduct of a public employee may not be exempt from Sunshine Law based on public or privacy rights of the employee); Op. Att'y Gen. Fla. 77-132 (1977) (county personnel council may not deliberate in private prior to deciding whether or not to take disciplinary action against an employee); Op. Att'y Gen. Fla. 79-1 (1979) (section 286.011 prohibits the governing body of a municipal housing authority from excluding the executive director and other members of the authority's staff from a public meeting in which the board discusses personnel matters, regardless of whether members of the news media are in attendance or whether any other members of the public are present).

However, the legislature may provide for statutory exemptions for disciplinary hearings of certain personnel. *Tribune Co. v. Sch. Bd. of Hillsborough County*, 367 So. 2d 627 (Fla. 1979) (a special act giving a teacher the option of an open or closed hearing during a disciplinary proceeding is a valid legislative exception to section 286.011). See also, Fla. Stat. § 395.0115 (1991) (exempting proceedings of committees and governing bodies of hospitals or ambulatory surgical centers licensed in accordance with Ch. 895 which relate to disciplinary actions).

#### 3. Dismissal; considering dismissal of public employees.

A panel that meets to deliberate on the subject of an employee's discipline or termination is a "board" or "commission" within the meaning of the Sunshine Act, Fla. Stat. § 286.011(1), where "the panel exercises decision-making authority"; and it is a violation of the Sunshine Act for such a panel to conduct close-door deliberations regarding whether to terminate an employee. *Drascott v. Palm Beach Cnty.*, 877 So. 2d 8, 12, 14 (Fla. 4th DCA 2004); see also *Deininger v. Palm Beach Cnty.*, 922 So. 2d 1102, 1102-03 (Fla. 4th DCA 2006) (reversing order denying certification of a class claim for violation of Fla. Stat. § 286.011(1) consisting of county employees who were terminated or disciplined by a panel that deliberated in private). However, where a panel does not exercise decision-making authority (e.g., a panel that makes a recommendation on the record to an official that makes the ultimate decision to terminate), the panel is not a "board" or "commission" subject to the Act, and thus its deliberations may be behind closed doors. *Jordan v. Jenne*, 938 So. 2d 526, 530 (Fla. 4th DCA 2006).

### O. Real estate negotiations.

Negotiations for the sale or purchase of real property must be conducted openly. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). See also, Op. Att'y Gen. Fla. 74-294 (1974) (single member to whom authority to acquire land is delegated cannot negotiate for such acquisitions in secret); *Zorc v. Jordan*, 765 So. 2d 768 (Fla. 4th DCA 2000) (city commission's action in voting to pay one of its commission members an allegedly unreasonable appraisal value for land acquired

by the city violates the Sunshine Law because the decision was made in a non-public meeting). Although there are statutory exemptions relating to public records of certain public real estate transactions, such provisions specifically state that "nothing in this section shall be interpreted as providing an exemption from or exception to sec. 286.011." See Fla. Stat. §§ 125.355, 166.045, and 235.054 (1995).

### P. Security, national and/or state, of buildings, personnel or other.

There is no statutory, judicial or attorney general authority relating to the application of section 286.011 to meetings at which security is addressed.

### Q. Students; discussions on individual students.

See discussion above at II.B.6.

## IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

### A. When to challenge.

A challenge may be made any time a present dispute exists. See *Askew v. City of Ocala*, 348 So. 2d 208 (Fla. 1977) (declaratory relief not appropriate where plaintiff seeks judicial advice different from that advanced by the Attorney General and/or the state attorney).

#### 1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

Although section 286.011 does not provide specifically for an expedited procedure for reviewing a request to attend an upcoming meeting, the statute does give the circuit courts jurisdiction to issue injunctions to enforce the purposes of the section. Fla. Stat. § 286.011(2), (1995).

#### 2. When barred from attending.

A member of the public would bring an action pursuant to section 286.011 if the individual was improperly barred from a meeting, if proper notice of the meeting was not given, if the individual wanted to set aside a decision made in an improperly closed meeting, or when a ruling on future meetings is sought.

#### 3. To set aside decision.

Under § 286.011, Fla. Stat., no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting. Accordingly, courts have held that action taken in violation of the law is void *ab initio*. See, e.g., *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Blackford v. School Bd. of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979); *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010). A proceeding to set aside action that was not taken or made at an open meeting would necessarily occur after the meeting. To be valid, resolutions made during meetings held in violation of section 286.011 must be re-examined and re-discussed in open public meetings. See *Blackford, supra*.

#### 4. For ruling on future meetings.

Future violations may be enjoined by the court so long as one violation has been found and it appears either: (1) that future violation will bear a resemblance to the past violation; or (2) that the danger of future violations can be anticipated from the course of conduct in the past. See *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (trial court's permanent injunction affirmed); see also *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1170 n.1 (Fla. 2d DCA 1999) (noting that, had a citizen appealed the trial court's denial of temporary injunction, appellate court "would have had the opportunity to . . . direct that the City be enjoined from entering into a final contract with the developer until after such time as the ranking of the proposals could be accomplished in compliance with the Sunshine Law.")

## B. How to start.

### 1. Where to ask for ruling.

One must seek review in the courts. See discussion, below at IV.C.3.2. Applicable Time Limits. There are no time limits within the statutory framework of section 286.011 for a challenge under the Sunshine Act.

### 2. Applicable time limits.

There are no time limits within the statutory framework of section 286.011 for a challenge under the Sunshine Act.

### 3. Contents of request for ruling.

A complaint alleging violation of the Sunshine Law must allege by name or sufficient description the identity of the public official with whom the defendant public official has violated the Sunshine Law. *Deerfield Beach Publ'g, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988).

### 4. How long should you wait for a response?

There are no time limits within the statutory framework of section 286.011 for a challenge under the Sunshine Act.

## C. Court review of administrative decision.

### 1. Who may sue?

While the Sunshine Act gives the “public” access to meetings of public boards or commissions, the act provides that only a “citizen of this state” may bring an action for improper denial of access to a meeting of a public board or commission. Fla. Stat. § 286.011(2) (1995). Additionally, an individual who sues under the Sunshine Law to enforce a public right is not required to first pursue an administrative remedy. *Silver Express Co. v. Dist. Bd. of Tr. of Miami-Dade Cmty. Coll.*, 691 So. 2d 1099 (Fla. 3d DCA 1997).

### 2. Will the court give priority to the pleading?

There is no authority addressing whether pleadings are to be given priority.

### 3. Pro se possibility, advisability.

In order to enforce the provisions of the Florida Sunshine Law, resort must be made to the courts. There is no simplified, or expedited procedure for persons seeking redress under the Act. Thus, while an individual may be permitted to proceed pro se, it is not advisable to do so, since a familiarity with procedural and substantive law is required.

### 4. What issues will the court address?

#### a. Open the meeting.

If such relief is warranted, Florida courts will provide injunctive relief requiring that a meeting of a board or commission of a public agency be opened up to the public. See, e.g., *Marston v. Wood*, supra, 444 So. 2d 1141.

Florida courts have also ordered open records of improperly closed meetings. See, e.g., *Mem'l Hosp-West Volusia Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 1999).

#### b. Invalidate the decision.

Florida courts are authorized to invalidate actions taken at meetings held in violation of the Sunshine Law. Fla. Stat. § 286.011(4) (1995). See *Silver Express Co. v. Dist. Bd. of Tr. of Miami-Dade Cmty. Coll.*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee's violation of Sunshine Law when it held closed meeting to evaluate proposals was irreparable public injury, warranting temporary injunction prohibiting college and successful bidder from entering into two-year contract based on findings of the committee); but see *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998) (full and open hearing will cure defect arising

from a Sunshine Law violation); *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168 (Fla. 2d DCA 1999) (city violated Sunshine Law when it failed to hold a public meeting before taking the formal action of short-listing the firms responding to a request for proposals; however, controversy is moot because acts that plaintiff sought to enjoin had already been committed).

#### c. Order future meetings open.

Florida courts have issued declaratory judgments ordering that future meetings of a board or commission of a public agency be open to the public. See, e.g., *Marston v. Wood*, 442 So. 2d 934 (Fla. 1983).

### 5. Pleading format.

There is no special pleading format to enforce the Florida Sunshine Law.

### 6. Time limit for filing suit.

There is no statutory time limit for filing suit against a board, commission, or a member thereof who has held or intends to hold a meeting in violation of the Sunshine Act.

### 7. What court.

Actions to enforce the provisions of section 286.011 should be filed in circuit court. See Fla. Stat. § 286.011(2) (1995).

### 8. Judicial remedies available.

The public meeting statute (Sunshine Law) specifically provides for injunctive relief for persons wrongfully denied access to a meeting of a public board or commission. Courts may also render declaratory judgments under the Sunshine Law.

### 9. Availability of court costs and attorneys' fees.

Whenever a citizen has filed an action to enforce the provisions of section 286.011, or to invalidate actions taken at a meeting in violation thereof, and the court determines that such a violation was committed, it must assess reasonable attorney fees against the defendant(s). Fla. Stat. § 286.011(4) (1995). See, e.g., *Mem'l Hosp-West Volusia Inc. v. News-Journal Corp.*, 784 So. 2d 438 (Fla. 2001); *Indian River Cmty. Hosp. Dist. v. Indian River Mem'l Hosp. Inc.*, 766 So. 2d 233 (Fla. 4th DCA 2000). Attorney fees may also be assessed against a plaintiff who sues under section 286.011, and fails to present facts which create a justifiable issue. Cf. *Bland v. Jackson County*, 514 So. 2d 1115 (Fla. 1st DCA 1987). There is no comparable provision for assessment of court costs. Section 286.011(4) does not relieve a litigant from full compliance with the Rules of Appellate Procedure. *School Bd. of Alachua Cmty.*, 661 So. 2d 331 (Fla. 1st DCA 1995).

### 10. Fines.

A public officer subject to section 286.011 who violates a provision therein is guilty of a non-criminal infraction, punishable by a fine up to \$500. Fla. Stat. section 286.011(3)(a) (1995).

### 11. Other penalties.

A public officer who knowingly violates section 286.011 by attending a meeting not in accordance with section 286.011 is guilty of a second degree misdemeanor, which is punishable by up to one year imprisonment and/or a fine up to \$1,000. Fla. Stat. §§ 286.011(3)(b), 775.082(4)(a), 775.083(1)(d) (1995). A party is not eligible to receive monetary damages under the Sunshine Law. *Sinclair v. Town of Yankeetown*, 2008 WL 660089 at \*4 (N.D. Fla. Mar. 7, 2008).

## D. Appealing initial court decisions.

### 1. Appeal routes.

The appeal route for challenging a decision made under the Florida Sunshine Law is the same as the appeal route for other civil actions. Fla. R. App. P. 9.

## 2. Time limits for filing appeals.

As in the appeal of other actions, an appeal from a circuit court decision relating to section 186.011 must be made to the proper District court within thirty days of the circuit court decision.

## 3. Contact of interested amici.

Because court decisions on open records issues may have far-reaching consequences, press groups and others may have an interest in filing a friend-of-the-court brief on behalf of your request for open records. The Reporters Committee for Freedom of the Press frequently files friend-of-the-court briefs for open records issues being considered at the highest appeal level in the state.

## V. ASSERTING A RIGHT TO COMMENT.

### A. Is there a right to participate in public meetings?

The Florida Supreme Court has recognized public participation in open meetings is important. *See, e.g., Bd. of Public Instruction of Broward County v. Doan*, 224 So. 2d 693, 699 (Fla. 1969) (“[S]pecified boards and commissions . . . should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.”); *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 475 (Fla. 1974) (explaining that public meeting is “a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the [public body].”). While the right to participate is not particularly well-defined, the Florida Code expressly provides that members of the public have a right to participate, subject to control by the decision-making body, in quasi-judicial proceedings on local government land use matters. Fla. Stat. § 286.0115(2) (b). The Florida Supreme Court has, however, held that there may be no right to participate in public meetings regarding certain types of executive functions which have traditionally been conducted without public input. *See Wood v. Marston*, 442 So. 2d 934, 941 (Fla. 1983).

### B. Must a commenter give notice of intentions to comment?

There is no requirement that a commenter give notice of intentions to comment where the commenter has a right to comment.

### C. Can a public body limit comment?

As noted above, the Florida Supreme Court has indicated that there may be no right to comment where committees are carrying out certain executive functions which have traditionally been conducted without public input. Where there is a right to comment, it seems clear that the public body has the right to adopt reasonable rules and policies to ensure the orderly conduct of public meetings. *See, e.g., Fla. Stat. § 286.0115(2)(b); see also Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (“[T]o deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting — would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions.”).

### D. How can a participant assert rights to comment?

There is no authority prescribing the manner in which a participant can assert rights to comment.

### E. Are there sanctions for unapproved comment?

The Sunshine Law does not prescribe sanctions for unapproved comment.

## Statute

### Open Records

#### *Florida Statutes*

#### *Title X. Public Officers, Employees, and Records (Chapters 110-123)*

#### *Chapter 119. Public Records*

#### *119.01. General state policy on public records*

(1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

(2)

(a) Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

(b) When designing or acquiring an electronic recordkeeping system, an agency must consider whether such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(c) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records that are online or stored in an electronic recordkeeping system used by the agency.

(d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4).

(3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07.

#### *119.011. Definitions*

As used in this chapter, the term:

(1) “Actual cost of duplication” means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.

(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.

(3)

(a) “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) “Criminal intelligence information” and “criminal investigative information” shall not include:

1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h).
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.
5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:
  - a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
  - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
6. Informations and indictments except as provided in s. 905.26.

(d) The word “active” shall have the following meaning:

1. Criminal intelligence information shall be considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
2. Criminal investigative information shall be considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) “Criminal justice agency” means:

- (a) Any law enforcement agency, court, or prosecutor;
- (b) Any other agency charged by law with criminal law enforcement duties;
- (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or

(d) The Department of Corrections.

(5) “Custodian of public records” means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

(6) “Data processing software” means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(7) “Duplicated copies” means new copies produced by duplicating, as defined in s. 283.30.

(8) “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.

(9) “Information technology resources” means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.

(10) “Paratransit” has the same meaning as provided in s. 427.011.

(11) “Proprietary software” means data processing software that is protected by copyright or trade secret laws.

(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.

(13) “Redact” means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.

(14) “Sensitive,” for purposes of defining agency-produced software that is sensitive, means only those portions of data processing software, including the specifications and documentation, which are used to:

- (a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1);
- (b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
- (c) Control and direct access authorizations and security measures for automated systems.

*119.0115. Repealed by Laws 2004, c. 2004-335, § 4, eff. Oct. 1, 2004*

*119.012. Repealed by Laws 2004, c. 2004-335, § 4, eff. Oct. 1, 2004*

*119.02. Repealed by Laws 2004, c. 2004-335, § 4, eff. Oct. 1, 2004*

*119.021. Custodial requirements; maintenance, preservation, and retention of public records*

(1) Public records shall be maintained and preserved as follows:

(a) All public records should be kept in the buildings in which they are ordinarily used.

(b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.

(c)

1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read.

2. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of the concerned state agency, department, board, or commission; the board of county commissioners of such county; or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.

3. Any public official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book. The copy shall then have the force and effect of the original.

(2)

(a) The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.

(b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.

(c) Each public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division in accordance with s. 257.36.

(d) The division may ascertain the condition of public records and shall give advice and assistance to public officials to solve problems related to the preservation, creation, filing, and public accessibility of public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall, subject to the availability of necessary space, staff, and other facilities for such purposes, make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

(3) Agency orders that comprise final agency action and that must be indexed or listed pursuant to s. 120.53 have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Department of State.

(4)

(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State, all public records kept or received by him or her in the transaction of official business.

(b) Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records.

*119.03. Repealed by Laws 1969, c. 69-353, § 59*

*119.031. Repealed by Laws 2004, c. 2004-335, § 6, eff. Oct. 1, 2004*

*119.04. Repealed by Laws 1969, c. 69-353, § 59*

*119.041. Repealed by Laws 2004, c. 2004-335, § 6, eff. Oct. 1, 2004*

*119.05. Repealed by Laws 2004, c. 2004-335, § 6, eff. Oct. 1, 2004*

*119.06. Repealed by Laws 2004, c. 2004-335, § 6, eff. Oct. 1, 2004*

*119.07. Inspection and copying of records; photographing public records; fees; exemptions*

(1)

(a) Every person who has custody of a 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.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall

be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

(2)

(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.

(b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.

(c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.

(3)

(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.

(b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.

(c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.

(d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).

(4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:

(a)

1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches;

2. No more than an additional 5 cents for each two-sided copy; and

3. For all other copies, the actual cost of duplication of the public record.

(b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

(c) An agency may charge up to \$1 per copy for a certified copy of a public record.

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

(e)

1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.

2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.

(5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.

(7) An exemption from this section does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided.

(8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

*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.

a. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals 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 a decision or intended decision pursuant to s. 120.57(3)(a) or within 10 days after bid or proposal opening, whichever is earlier.

b. If an agency rejects all bids or proposals submitted in response to an invitation to bid or request for proposals and the agency concurrently provides notice of its intent to reissue the invitation to bid or request for proposals, the rejected bids or proposals 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 a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to bid or request for proposals or until the agency withdraws the reissued invitation to bid or request for proposals. 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, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

2.

a. A competitive sealed reply in response to an invitation to negotiate, as defined in s. 287.012, is 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 a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

b. If an agency rejects all competitive sealed replies in response to an invitation to negotiate and concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate, the rejected 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 a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

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, 2011, 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.

(g)

1. United States Census Bureau address information, which includes maps showing structure location points, agency records verifying addresses, and agency records identifying address errors or omissions, held by an agency pursuant to the Local Update of Census Addresses Program, Title 13, United States Code, Pub. L. No. 103-430, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Such information may be released to another agency or governmental en-

tity in the furtherance of its duties and responsibilities under the Local Update of Census Addresses Program.

3. An agency performing duties and responsibilities under the Local Update of Census Addresses Program shall have access to any other confidential or exempt information held by another agency if such access is necessary in order to perform its duties and responsibilities under the program.

4. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

(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 emergencies, as defined in s. 252.34(3), 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 Department of Community Affairs 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, 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, 2013, 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.
    - a. The home addresses, telephone numbers, social security numbers, and photographs of active or former 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, 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, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, 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 and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from s. 119.07(1).
    - d. The home addresses, telephone numbers, social security numbers, 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, 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 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, 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. 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, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, 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, 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, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, 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, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, 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. 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, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

i. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, 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. 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, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

j. The home addresses, telephone numbers, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional coun-

sel; the home addresses, telephone numbers, 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. 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, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

2. An agency that is the custodian of the information specified in subparagraph 1. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. 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.—

(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 ride-sharing 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 Community Affairs, 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)

1. 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:

- a. Any record of friction ridge detail;
- b. Fingerprints;
- c. Palm prints; and
- d. Footprints.

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, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

(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.

*119.0711. Executive branch agency exemptions from inspection or copying of public records*

When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain, all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. The agency shall not finally accept the offer for a period of 30 days in order to allow public review of the transaction. The agency may give conditional acceptance to any option or offer subject only to final acceptance by the agency after the 30-day review period. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption shall expire at the conclusion of the condemnation litigation of the subject property. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the same extent as appraisals, other reports relating to value, offers, and counteroffers. For the purpose of this subsection, the term “option contract” means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. This subsection has no application to other exemptions from s. 119.07(1) which are contained in other provisions of law and shall not be construed to be an express or implied repeal thereof.

*119.0712. Executive branch agency-specific exemptions from inspection or copying of public records*

(1) Department of health.—All personal identifying information contained in records relating to an individual’s personal health or eligibility for health-related services held by the Department of Health is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this subsection. Information made confidential and exempt by this subsection 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 necessary to protect the health or life of the individual.

(c) By court order upon a showing of good cause.

(d) To a health research entity, if the entity seeks the records or data pursu-

ant to a research protocol approved by the department, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4). The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

(2) Department of highway safety and motor vehicles.—

(a) For purposes of this subsection, the term “motor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles.

(b) Personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

(c)

1. Emergency contact information contained in a motor vehicle record is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

(d) The department may adopt rules to carry out the purposes of this subsection and the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. Rules adopted by the department may provide for the payment of applicable fees and, prior to the disclosure of personal information pursuant to this subsection or the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., may require the meeting of conditions by the requesting person for the purposes of obtaining reasonable assurance concerning the identity of such requesting person, and, to the extent required, assurance that the use will be only as authorized or that the consent of the person who is the subject of the personal information has been obtained. Such conditions may include, but need not be limited to, the making and filing of a written application in such form and containing such information and certification requirements as the department requires.

*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 shall not affect any function or activity of the Florida Commission on Human Relations. 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. This subsection shall not be construed to modify or repeal any special or local act.

(2) The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit 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 becomes final when the audit report is presented to the unit of local government. Audit workpapers and notes related to such audit report are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit is completed and the audit report becomes final.

(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 when 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.

*119.0714 Court files; court records; official records.—*

(1) Court files—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(a) A public record that was prepared by an agency attorney or prepared at the attorney’s express direction as provided in s. 119.071(1)(d).

(b) Data processing software as provided in s. 119.071(1)(f).

(c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).

(d) Any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).

(e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).

(f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).

(g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).

(h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h).

(i) Social security numbers as provided in s. 119.071(5)(a).

(j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).

(2) Court records.—

(a) Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder’s attorney or legal guardian.

(b) A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

(c) A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

(d) The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.

(e)

1. On January 1, 2012, and thereafter, the clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

(3) Official records.—

(a) Any person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

(b)

1. If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

2. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (b), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

3. Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to official records.

(c) The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

(d) A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.

(e) The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

(f) A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

(g) A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.

2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(h) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction shall be deemed to be the best effort in performing the redaction and shall be deemed in compliance with the requirements of this subsection.

(i) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

*119.072. Renumbered as 119.071(2)(b) by Laws 2005, c. 2005-251, § 10, eff. Oct. 1, 2005*

See, now, § 119.071(2)(b).

*119.0721. Renumbered as 119.071(5)(a) by Laws 2005, c. 2005-251, § 24, eff. Oct. 1, 2005*

See, now, § 119.071(5)(a).

*119.08. Repealed by Laws 2004, c. 2004-335, § 8, eff. Oct. 1, 2004*

*119.083. Repealed by Laws 2002, c. 2002-2, § 1, eff. May 21, 2002*

*119.084. Copyright of data processing software created by governmental agencies; sale price and licensing fee*

(1) As used in this section, "agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(2) An agency is authorized to acquire and hold a copyright for data processing software created by the agency and to enforce its rights pertaining to such copyright, provided that the agency complies with the requirements of this subsection.

(a) An agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of such data processing software that may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).

(b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.

(c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

*119.085. Repealed by Laws 2004, c. 2004-335, § 10, eff. Oct. 1, 2004*

*119.09. Repealed by Laws 2004, c. 2004-335, § 10, eff. Oct. 1, 2004*

*119.092. Registration by federal employer's registration number*

Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

*119.10. Violation of chapter; penalties*

(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 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*119.105. Protection of victims of crimes or accidents*

Police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. A person who comes into possession of exempt or confidential

information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.

#### 119.11. Accelerated hearing; immediate compliance

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.

(4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under s. 119.07(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in s. 119.07(1) and other provisions of law.

#### 119.12. Attorney's fees

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

#### 119.14. Repealed by Laws 1995, c. 95-217, § 1, eff. Oct. 1, 1995

#### 119.15. Legislative review of exemptions from public meeting and public records requirements

(1) This section may be cited as the "Open Government Sunset Review Act."

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011. This act does not apply to an exemption that:

- (a) Is required by federal law; or
- (b) Applies solely to the Legislature or the State Court System.

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

(4)

(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;
2. Exempt from s. 119.07(1) or s. 286.011; and

3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)

(a) By June 1 in the year before the repeal of an exemption under this section, the Division of Statutory Revision of the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

(b) Any exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(6)

(a) As part of the review process, the Legislature shall consider the following:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

(b) An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(7) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

## Open Meetings

### Florida Statutes

#### Title XIX. Public Business (Chapters 279-290)

#### Chapter 286. Public Business; Miscellaneous Provisions

#### 286.001. Reports statutorily required; filing, maintenance, retrieval, and provision

of copies

(1) Unless otherwise specifically provided by law, any agency or officer of the executive, legislative, or judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, or the Public Service Commission required or authorized by law to make reports regularly or periodically shall fulfill such requirement by filing an abstract of the report with the statutorily or administratively designated recipients of the report and an abstract and one copy of the report with the Division of Library and Information Services of the Department of State, unless the head of the reporting entity makes a determination that the additional cost of providing the entire report to the statutorily or administratively designated recipients is justified. A one-page summary justifying the determination shall be submitted to the chairs of the governmental operations committees of both houses of the Legislature. The abstract of the contents of such report shall be no more than one-half page in length. The actual report shall be retained by the reporting agency or officer, and copies of the report shall be provided to interested parties and the statutorily or administratively designated recipients of the report upon request.

(2) With respect to reports statutorily required of agencies or officers within the executive, legislative, or judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, or the Public Service Commission, it is the duty of the division, in addition to its duties under s. 257.05, to:

(a) Regularly compile and update bibliographic information on such reports for distribution as provided in paragraph (b). Such bibliographic information may be included in the bibliographies prepared by the division pursuant to s. 257.05(3)(c).

(b) Provide for at least quarterly distribution of bibliographic information on reports to:

1. Agencies and officers within the executive, legislative, and judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, and the Public Service Commission, free of charge; and

2. Other interested parties upon request properly made and upon payment of the actual cost of duplication pursuant to s. 119.07(1).

(3) As soon as practicable, the administrative head of each executive, legislative, or judicial agency and each agency of the State Board of Education, the Board of Governors of the State University System, and the Public Service Commission required by law to make reports periodically shall ensure that those reports are created, stored, managed, updated, retrieved, and disseminated through electronic means.

(4) Nothing in this section shall be construed to waive or modify the requirement in s. 257.05(2) pertaining to the provision of copies of public documents to the division.

*286.01. Repealed by Laws 1949, c. 25035, § 11*

*286.0105. Notices of meetings and hearings must advise that a record is required to appeal*

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

*286.011. Public meetings and records; public inspection; criminal and civil penalties*

(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 meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction

to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)

(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons

chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

*286.0111. Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities*

The provisions of s. 119.15, the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15.

*286.0113. General exemptions from public meetings*

(1) That portion of a meeting that would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2)

(a) A meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(1) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b)

1. A complete recording shall be made of any meeting made exempt in paragraph (a). No portion of the meeting may be held off the record.

2. The recording required under subparagraph 1. is 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 a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

3. If the agency rejects all sealed replies, the recording remains 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 a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A recording is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

*286.0115. Access to local public officials; quasi-judicial proceedings on local government land use matters*

(1)

(a) 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 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.

(b) As used in this subsection, the term "local public official" means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(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. 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.

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.

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.

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.

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.

(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.

(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, 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. 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.

(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. 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. 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.

(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.

*286.012. Voting requirement at meetings of governmental bodies*

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.