

First Amendment Foundation, Inc. ....

Introduction .....

2010 Legislative Highlights .....

**PART I**

**GOVERNMENT IN THE SUNSHINE LAW**

A. WHAT IS THE SCOPE OF THE SUNSHINE LAW? .....

B. WHAT AGENCIES ARE COVERED BY THE SUNSHINE LAW? .....

1. Are all public agencies subject to the Sunshine Law? .....
2. Are advisory boards which make recommendations or committees established only for fact-finding subject to the Sunshine Law? .....

  - a. Publicly created advisory boards which make recommendations .....
  - b. Fact-finding committees .....

3. Are private organizations subject to the Sunshine Law? .....

  - a. Private entities created pursuant to law or by public agencies .....
  - b. Private entities providing services to public agencies .....
  - c. Homeowners' associations .....

4. Are federal agencies subject to the Sunshine Law? .....
5. Does the Sunshine Law apply to the Governor and Cabinet? .....
6. Does the Sunshine Law apply to commissions created by the Constitution? .....
7. Does the Sunshine Law apply to the Legislature? .....
8. Does the Sunshine Law apply to the judiciary? .....

  - a. Criminal proceedings .....
  - b. Civil proceedings .....
  - c. Depositions .....
  - d. Florida Bar grievance proceedings .....
  - e. Grand juries .....
  - f. Judicial nominating commissions/Judicial Qualifications Commission .....
  - g. Mediation proceedings .....

9. Does the Sunshine Law apply to staff? .....
10. Does the Sunshine Law apply to members of public boards who also serve as administrative officers or employees? .....

C. WHAT IS A MEETING SUBJECT TO THE SUNSHINE LAW? .....

1. Number of board members required to be present .....
2. Circumstances in which the Sunshine Law may apply to a single individual or where two board members are not physically present .....

  - a. Written correspondence between board members .....
  - b. Meetings conducted over the telephone or using electronic media technology .....

    - (1) Discussions conducted via telephones, computers, or other electronic means are not exempted from the Sunshine Law .....
    - (2) Authority of boards to conduct public meetings via electronic media technology (e.g., telephone or video conferencing) .....

      - (a) State boards .....

- (b) Local boards .....
    - c. Delegation of authority .....
    - d. Use of nonmembers as liaisons between board members .....
- D. WHAT TYPES OF DISCUSSIONS ARE COVERED BY THE SUNSHINE LAW? .....
- 1. Informal discussions, workshops .....
  - 2. Investigative meetings or meetings to consider confidential material .....
  - a. Investigative meetings .....
    - b. Meetings to consider confidential material .....
  - 3. Legal matters .....
  - a. Settlement negotiations or strategy sessions related to litigation expenditures .....
    - (1) Is s. 286.011(8) to be liberally or strictly construed? .....
      - (2) Who may call an attorney-client meeting? .....
      - (3) Who may attend? .....
      - (4) Is substantial compliance with the conditions established in the statute adequate? .....
      - (5) What kinds of matters may be discussed at the attorney-client session? .....
      - (6) When is an agency a party to "pending litigation" for purposes of the exemption? .....
      - (7) When is litigation "concluded" for purposes of s. 286.011(8)(e)? .....
    - b. Risk management exemption .....
    - c. Notice of settlement of tort claim .....
  - 4. Personnel matters .....
  - a. Collective bargaining discussions .....
    - (1) Strategy sessions .....
      - (2) Negotiations .....
    - b. Complaint review boards, disciplinary proceedings and grievances .....
    - c. Evaluations .....
    - d. Interviews .....
    - e. Selection and screening committees .....
  - 5. Purchasing or bid evaluation committees .....
  - 6. Quasi-judicial proceedings .....
  - 7. Real property negotiations .....
- E. DOES THE SUNSHINE LAW APPLY TO: .....
- 1. Members-elect or candidates .....
  - 2. Meetings between members of different boards .....
  - 3. Meetings between a mayor and a member of the city council .....
  - 4. Meetings between a board member and his or her alternate .....
  - 5. Meetings between an *ex officio*, non-voting board member and a voting member of the board .....
  - 6. Community forums sponsored by private organizations .....
  - 7. Board members attending meetings of another public board .....
  - 8. Social events .....
  - 9. A husband and wife serving on the same board? .....
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  - a. Reasonable notice required .....
  - b. Notice requirements when meeting adjourned to a later date .....
  - c. Notice requirements when board acting as quasi-judicial body or taking action affecting individual rights .....
  - d. Effect of notice requirements imposed by other statutes, codes or ordinances .....
2. Does the Sunshine Law require that an agenda be made available prior to board meetings or restrict the board from taking action on matters not on the agenda? .....
3. Does the Sunshine Law limit where meetings of a public board or commission may be held? .....
4. Can restrictions be placed on the public's attendance at, or participation in, a public meeting? .....
5. May the members of a public board use codes or preassigned numbers in order to avoid identifying individuals? .....
6. May members of a public board vote by written or secret ballot? .....
7. Are board members authorized to abstain from voting? .....
8. Is a roll call vote required? .....
9. Must written minutes be kept of all sunshine meetings? .....
10. In addition to minutes, does the Sunshine Law require that meetings be transcribed or tape recorded? .....

G. WHAT ARE THE STATUTORY EXCEPTIONS TO THE LAW? .....

1. Sunshine Law to be liberally construed while exceptions to the law to be narrowly construed .....
2. Creation and review of exemptions .....
3. Statutory exemptions .....
4. Abuse meetings .....
5. Economic development meetings .....
6. Education meetings .....
7. Hearings involving minors .....
8. Hearings to obtain HIV test results .....
9. Hospitals .....
10. Public hospitals and health facilities .....

- (2) Private or nonprofit corporations operating public health facilities .....
- g. Insurance meetings .....
- h. Security and criminal justice meetings .....
- i. Licensure examination meetings .....
- 4. Special act exemptions .....

- H. WHAT ARE THE CONSEQUENCES IF A PUBLIC BOARD OR COMMISSION FAILS TO COMPLY WITH THE SUNSHINE LAW? .....
- 1. Criminal penalties .....
- 2. Removal from office .....
- 3. Noncriminal infractions .....
- 4. Attorney's fees .....
- 5. Civil actions for injunctive or declaratory relief .....
- 6. Validity of action taken in violation of the Sunshine Law and subsequent corrective action .....
- 7. Damages .....

**PART II  
PUBLIC RECORDS**

- A. WHAT IS THE SCOPE OF THE PUBLIC RECORDS ACT? .....
- B. WHAT IS A PUBLIC RECORD WHICH IS OPEN TO INSPECTION AND COPYING? .....
- 1. What materials are public records? .....
- 2. When are notes or nonfinal drafts of agency proposals subject to Ch. 119, F.S.? .....
- C. WHAT AGENCIES ARE SUBJECT TO THE PUBLIC RECORDS ACT? .....
- 1. Advisory boards .....
- 2. Private organizations .....
- a. Private entities created pursuant to law or by public agencies .....
- b. Private entities contracting with public agencies or receiving public funds .....
- (1) "Totality of factors" test .....
- (2) Delegation test .....
- c. Private company delegated authority to keep certain records .....
- d. Other statutory provisions .....
- (1) Legislative appropriation .....
- (2) Public funds used for dues .....
- (3) State contracts .....
- 3. Judiciary .....
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- b. Public access to judicial branch records, Fla. R. Jud. Admin. 2.420 .....
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    - (4) Procedures for accessing judicial branch records under rule 2.420 .....
    - (5) Review of denial of access to administrative records .....
  - c. Electronic judicial records .....
  - d. Discovery material .....
  - e. Florida Bar .....
  - f. Judicial Qualifications Commission and judicial nominating commissions .....
  - g. Jury records .....
  - (1) Grand jury .....
    - (2) Trial jury .....
  - h. Sunshine in Litigation Act .....
- 4. Legislature .....
- 5. Governor and Cabinet .....
- 6. Commissions created by the Constitution .....

**D. WHAT KINDS OF AGENCY RECORDS ARE SUBJECT TO THE PUBLIC RECORDS ACT? .....**

- 1. Computer records .....
- a. Computer records are public records .....
  - b. "E-Mail" .....
  - (1) Personal e-mail .....
    - (2) E-mail address public records disclosure statement .....
  - c. Facebook .....
  - d. Formatting issues .....
  - e. Remote access .....
  - f. Security exemptions .....
  - g. Software created by an agency .....
  - (1) Copyrighted agency-created software .....
    - (2) "Sensitive" agency-created software .....
  - h. Trade secret exemptions .....
- 2. Election records .....
- a. Ballots .....
  - b. Voter registration and voter records .....
- 3. Financial records .....
- a. Audit reports .....
  - (1) Auditor General audits .....
    - (2) Local government audits .....
    - (3) State agency inspector general audits .....
  - b. Bids .....
  - c. Budgets .....
  - d. Economic development records .....
  - (1) Convention center booking business records .....
    - (2) Business location or expansion plans .....
    - (3) Tourism promotion records .....
  - e. Personal financial records .....
  - f. Security interests .....
  - g. Taxpayer records .....
  - h. Telephone bills .....
  - i. Trade secrets and proprietary confidential business information .....

4. Investigative records of non law enforcement agencies .....
  - a. Investigative records subject to Ch. 119, F.S., in absence of legislative exemption .....
  - b. Statutory exemptions .....
    - (1) Ethics investigations .....
    - (2) State inspector general investigations .....
    - (3) State licensing investigations .....
    - (4) Whistle-blower investigations .....
5. Litigation records .....
  - a. Attorney-client communications .....
  - b. Attorney work product .....
    - (1) Scope of statutory exemption .....
      - (a) Attorney bills and payments .....
      - (b) Investigations .....
    - (2) Commencement and termination of statutory exemption .....
      - (a) Settlement records .....
      - (b) Criminal cases .....
  - c. Other statutory exemptions relating to litigation records .....
  - d. Attorney notes .....
6. Personnel records .....
  - a. Personnel records open to inspection unless exempted by law .....
  - b. Employment search or consultant records .....
  - c. Privacy concerns .....
  - d. Conditions for inspection of personnel records .....
    - (1) Presence of employee .....
    - (2) Separate files .....
  - e. Collective bargaining .....
    - (1) Relationship of collective bargaining agreement to personnel records .....
    - (2) Collective bargaining work product exemption .....
  - f. Statutory exemptions .....
    - (1) Annuity or custodial account activities .....
    - (2) Complaints .....
    - (3) Criminal history information .....
    - (4) Deferred compensation .....
    - (5) Department of the Lottery .....
    - (6) Direct deposit .....
    - (7) Drug test results .....
    - (8) Employee assistance program .....
    - (9) Evaluations of employee performance .....
    - (10) Examination questions and answer sheets .....
    - (11) Home addresses and telephone numbers, photographs, family information .....
    - (12) Medical information .....
    - (13) Retiree names and addresses .....
    - (14) Ridesharing information .....
7. Social security numbers .....

E. TO WHAT EXTENT MAY AN AGENCY REGULATE OR LIMIT

INSPECTION AND COPYING OF PUBLIC RECORDS? .....

1. May an agency impose its own restrictions on access to or copying of public records? .....
  - a. Agency-imposed restrictions invalid .....
  - b. Mail procedures .....
  - c. Inspection at off-premises location .....
2. What individuals are authorized to inspect and receive copies of public records? .....
3. Must an individual show a "special interest" or "legitimate interest" in public records before being allowed to inspect or copy same? .....
4. What agency employees are responsible for responding to public records requests? .....
5. May an agency refuse to comply with a request to inspect or copy the agency's public records on the grounds that the records are not in the physical possession of the custodian? .....
6. May an agency refuse to allow access to public records on the grounds that the records are also maintained by another agency? .....
7. May an agency refuse to allow inspection or copying of public records on the grounds that the request for such records is "overbroad" or lacks particularity? .....
8. May an agency require that a request to examine or copy public records be made in writing? .....
9. May an agency require that the requestor furnish background information to the custodian? .....
10. Is an agency required to: answer questions about its public records; create a new record in response to a request for information; or reformat its records in a particular form as demanded by the requestor? .....
11. When must an agency respond to a public records request? .....

  - a. Automatic delay impermissible .....
  - b. Delay in response .....
  - c. Arbitrary time for inspection .....
  - d. Standing requests .....

12. In the absence of express legislative authorization, may an agency refuse to allow public records made or received in the normal course of business to be inspected or copied if requested to do so by the maker or sender of the document? .....
13. Must an agency state the basis for its refusal to release an exempt record? .....
14. May an agency refuse to allow inspection and copying of an entire public record on the grounds that a portion of the record contains information which is exempt from disclosure? .....
15. May an agency refuse to allow inspection of public records because the agency believes disclosure could violate privacy rights? .....
16. What is the liability of a custodian for release of public records? .....

F. WHAT IS THE LEGAL EFFECT OF STATUTORY EXEMPTIONS FROM DISCLOSURE? .....

1. How are exemptions created? .....
2. Exemptions are strictly construed .....
3. Do newly-created exemptions apply retroactively? .....
4. Do statutes eliminating confidentiality apply retroactively? .....

- 5. Are records which are confidential and exempt from disclosure treated differently from those which are merely exempt from disclosure requirements? .....

  - a. Confidential records .....
  - b. Exempt records .....

- 6. Are exempt records discoverable? .....

G. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO LAW ENFORCEMENT AND SECURITY RECORDS? .....

- 1. Active criminal investigative and intelligence information exemption .....

  - a. Purpose and scope of exemption .....
  - b. What is active criminal investigative or intelligence information? .....
  - c. What information is *not* considered to be criminal investigative or intelligence information and must be released unless some other exemption applies? .....
  - d. Are records released to the defendant considered to be criminal investigative or intelligence information? .....
  - e. When is criminal investigative and intelligence information considered inactive and thus no longer exempt from disclosure? .....

    - (1) Active criminal investigative information .....
    - (2) Active criminal intelligence information .....
    - (3) Pending prosecutions or appeals .....

  - f. Does a criminal defendant's public records request trigger reciprocal discovery? .....
  - g. Does the active criminal investigative information exemption apply if the information has already been made public? .....
  - h. May active criminal investigative information be shared with another criminal justice agency without losing its protected status? .....
  - i. Do other public records become exempt from disclosure simply because they are transferred to a criminal justice agency? .....
  - j. Is an entire report exempt if it contains some active criminal investigative or intelligence information? .....
  - k. When is criminal investigative or intelligence information received from other states or the federal government exempt from disclosure? .....
  - l. Is criminal investigative or intelligence information received prior to January 25, 1979, exempt from disclosure? .....

- 2. Autopsy records .....

  - a. Autopsy reports .....
  - b. Autopsy photographs and recordings .....

- 3. "Baker Act" reports .....
- 4. Confessions .....
- 5. Confidential informants .....
- 6. Criminal history information .....

  - a. Criminal history information generally .....
  - b. Sealed and expunged records .....

- 7. Emergency "911" voice recordings .....
- 8. Fingerprint records .....
- 9. Firearms records .....
- 10. Juvenile offender records .....



- a. Confidentiality .....
- b. Exceptions to confidentiality .....
  - (1) Child traffic violators .....
  - (2) Felony arrests and adult system transfers .....
  - (3) Mandatory notification to schools .....
  - (4) Victim access .....
  - (5) Sexual offenders .....
- 11. Law enforcement personnel records .....
  - a. Complaints filed against law enforcement officers .....
    - (1) Scope of exemption and duration of confidentiality .....
    - (2) Law enforcement officer's access .....
    - (3) Limitations on disclosure .....
    - (4) Unauthorized disclosure penalties .....
  - b. Home addresses, telephone numbers, etc. ....
  - c. Polygraph records .....
  - d. Undercover personnel .....
- 12. Motor vehicle records .....
- a. Crash reports .....
- b. Department of Highway Safety and Motor Vehicles records .....
- 13. Pawnbroker records .....
- 14. Prison and inmate records .....
- 15. Resource inventories and emergency response plans .....
- 16. Security system information and blueprints .....
  - a. Security system information .....
  - b. Blueprints .....
- 17. Surveillance techniques, procedures or personnel .....
- 18. Victim information .....
  - a. Amount of stolen property .....
  - b. Commercial solicitation of victims .....
  - c. Documents regarding victims which are *received* by an agency .....
  - d. Home or employment address, telephone number, assets .....
  - e. Information revealing the identity of victims of sex offenses and of child abuse .....
    - (1) Law enforcement and prosecution records .....
    - (2) Court records .....
    - (3) Department of Children and Family Services abuse records .....
  - f. Relocated victim or witness information .....

- H. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO BIRTH AND DEATH RECORDS? .....
  - 1. Birth and adoption records .....
  - 2. Death certificates .....

- I. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO HOSPITAL AND MEDICAL RECORDS? .....
  - 1. Communicable or infectious disease reports .....
  - 2. Emergency medical services .....
  - 3. Hospital records .....
    - a. Public hospitals .....

- (1) Employee evaluations and personal identification information .....
- (2) Proprietary business records .....
- (3) Quality assurance records .....
- b. Private hospitals/private organizations operating public hospitals .....
- 4. Patient records .....
- 5. Anatomical gifts donor records .....

J. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO EDUCATION RECORDS? .....

- 1. Direct-support organizations .....
- 2. Education personnel records .....
- a. Public school personnel .....
- b. University and community college personnel .....
- 3. Examination materials .....
- 4. Student records .....
- 5. Charter schools .....
- 6. School readiness programs .....

K. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO ABUSE RECORDS? .....

- 1. Records of abuse of children and vulnerable adults .....
- a. Confidentiality of abuse records .....
- b. Release of abuse records .....
- c. Licensure and quality assurance records .....
- 2. Domestic violence .....

L. TO WHAT EXTENT DOES FEDERAL LAW PREEMPT STATE LAW REGARDING PUBLIC INSPECTION OF RECORDS? .....

- 1. Under what circumstances will a federal statute operate to make agency records confidential? .....
- 2. To what extent is copyrighted material in possession of an agency subject to public inspection and copying? .....
- a. Copyrights held by agencies .....
- b. Copyrighted material obtained by agencies .....

M. WHAT FEES MAY LAWFULLY BE IMPOSED FOR INSPECTING AND COPYING PUBLIC RECORDS? .....

- 1. When may an agency charge a fee for the mere inspection of public records? .....
- 2. Is an agency required to provide copies of public records if asked, or may the agency allow inspection only? .....
- 3. Does Ch. 119, F.S., exempt certain individuals (such as indigent persons or inmates) from paying statutory fees to obtain copies of public records? .....
- 4. Are members of an advisory council entitled to copies of public records free of charge? .....
- 5. What are the statutory fees to obtain copies of public records? .....
- 6. May an agency charge for travel costs, search fees, development costs and other incidental costs? .....
- 7. May an agency require that production and copying of public records be accomplished only through a private company that acts as a clearinghouse for the agency's public records? .....

- 8. Should an agency charge sales tax when providing copies of public records? .....
- 9. Does s. 119.07(4), F.S., prescribe the fee that an agency may charge for furnishing a copy of a record to a person who is authorized to access an otherwise confidential record? .....
- 10. What are the charges if the requestor makes his or her own copies (*i.e.*, provides his or her own copying machine and makes the copies himself or herself)? .....
- 11. When may an agency charge a special service charge for *extensive* use of clerical or supervisory labor or *extensive* information technology resources? .....
  - a. What is the meaning of the term "extensive" as used in the statute? .....
  - b. What is meant by the term "information technology resources" as used in the statute? .....
  - c. What is meant by the term "clerical or supervisory assistance" as used in the statute? .....
    - (1) May an agency charge for the cost to review records for exempt information? .....
    - (2) How should the labor cost be calculated? .....
  - d. May an agency require a reasonable deposit or advance payment or must the agency produce the records and then ask for payment? .....
- 12. Fee issues relating to specific records .....
  - a. Clerk of court records .....
    - (1) County records .....
    - (2) Judicial records .....
  - b. Traffic reports .....

N. WHAT ARE THE OPTIONS IF AN AGENCY REFUSES TO PRODUCE PUBLIC RECORDS FOR INSPECTION AND COPYING? .....

- 1. Voluntary Mediation Program .....
- 2. Civil action .....
  - a. Remedies .....
    - (1) Mandamus .....
    - (2) Injunction .....
    - (3) Declaratory relief sought by agencies .....
  - b. Procedural issues .....
    - (1) Discovery .....
    - (2) Hearing .....
    - (3) *In camera* inspection .....
    - (4) Mootness .....
    - (5) Stay .....
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- 3. Criminal penalties .....

O. HOW LONG MUST AN AGENCY RETAIN A PUBLIC RECORD? .....

- 1. Maintenance of records .....
- 2. Delivery of records to successor .....
- 3. Retention and disposal of records .....

**APPENDICES**

- A. PUBLIC RECORDS AND MEETINGS CONSTITUTIONAL AMENDMENT ,.....
- B. GOVERNMENT IN THE SUNSHINE LAW AND RELATED STATUTES .....
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RULES OF JUDICIAL ADMINISTRATION .....
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INDEX TO EXEMPTIONS

## **A Public Policy of Open Government**

### **INTRODUCTION**

The Florida Constitution safeguards every person's right of access to public meetings and records. The comprehensive breadth and scope of our open government laws have served for many years as a model for the rest of the nation. In Florida, disclosure is the standard, unless the Legislature concludes that public necessity compels an exemption from our strong open government laws.

The best way to ensure that government truly represents the people it serves is to keep the government open and accessible to those people. For several decades now, Florida has shown that openness is the key to building and maintaining public trust in the institutions of government. The Attorney General's Office is committed to maintaining and building upon this tradition of openness.

The Government in the Sunshine Manual is prepared on an annual basis by the Florida Attorney General's Office to serve as a guide to those seeking to become familiar with the requirements of the open government laws. It is intended for both governmental agencies and the citizens they serve.

This year's edition of the manual incorporates court decisions, Attorney General Opinions, and legislation in place as of October 1, 2010.

Additional information about the Sunshine Law, including answers to frequently asked questions, is available through the Office of the Attorney General's website: [www.myfloridalegal.com](http://www.myfloridalegal.com).

Suggestions from users of this manual are welcomed and appreciated. Please forward comments to: The Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; telephone number (850) 245-0140.

## Legislative Highlights

The following are some of the more significant actions which occurred during the 2010 regular legislative session relating to the public's right of access to meetings and records.

**Credit History**--Credit history information and credit scores held by the Office of Financial Regulation within the Department of Financial Services for purposes of licensing loan originators, mortgage brokers, and mortgage lenders are exempt from disclosure except as provided therein. **Chapter 2010-169, Laws of Florida, amending s. 494.00125, F.S., to add a new subsection (3).**

**Examination techniques of Office of Financial Regulation**--Information revealing examination techniques or procedures used by the Office of Financial Regulation pursuant to Ch. 517, F.S., the Florida Securities and Investor Protection Act, is confidential and exempt from disclosure. **Chapter 2010-65, Laws of Florida, creating s. 517.2016, F.S.**

**Local Government's Ethics Investigations**--Where a county or municipality has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326, F.S., the complaint and records relating to the complaint or to any preliminary investigation are exempt until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that such records and proceedings be made public, or the county or municipality determines that probable cause exists. **Chapter 2010-130, Laws of Florida, amending s. 112.324(2), F.S.**

**Public Defenders and Assistant Public Defenders, Criminal Conflict and Civil Regional Counsel and assistant counsel**-- 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 counsel as well as 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 disclosure. **Chapter 2010-171, Laws of Florida, creating s. 119.071(4)(d)1.j., F.S.**

**Public Transit Providers**-- Personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card or similar device is exempt from disclosure. **Chapter 2010-196, Laws of Florida, creating s. 341.3026, F.S.**

**Recordings of Closed Meetings**--Several bills were enacted into law requiring the recording of closed meetings but providing that such recordings are exempt from disclosure as provided therein. See, e.g., **Chapter 2010-76, Laws of Florida, amending s. 497.172, F.S.** (closed meeting of the Board of Funeral, Cemetery, and Consumer Services where licensure examination questions or answers are discussed, as well as of a closed meeting of a probable cause panel of the board); **Chapter 2010-40, Laws of Florida, amending s. 383.412, F.S.** (closed meetings of state child abuse death review committee or local committee); **Chapter 2010-77, Laws of Florida, amending s. 1005.38, F.S.** (closed meeting of a probable cause panel of the Commission for Independent Education); **Chapter 2010-89, Laws of Florida, amending s. 627.0628, F.S.** (closed meeting of the Commission on Hurricane Loss Projection Methodology or of a rate proceeding on insurer's rate filing at which confidential and exempt trade secrets are discussed).

**Stalking Victims**--The names, addresses, and telephone numbers of stalking or aggravated stalking victims held by the Office of the Attorney General or contained in voter registration records and voting records held by the Department of State or the supervisor of elections are exempt from disclosure. **Chapter 2010-115, Laws of Florida, amending s. 97.0585, F.S., to add a new subsection (3).**

## PART I

### GOVERNMENT IN THE SUNSHINE LAW

#### A. WHAT IS THE SCOPE OF THE SUNSHINE LAW?

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed boards, and applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There are three basic requirements of s. 286.011, F.S.:

- (1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meetings must be taken and promptly recorded.

The complete text of the Government in the Sunshine Law and related statutes may be found in Appendix B.

A constitutional right of access to meetings of collegial public bodies is recognized in Art. I, s. 24, Fla. Const. See *Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012, 1021 (Fla. 2000), noting that the Sunshine Law "is of both constitutional and statutory dimension." Virtually all collegial public bodies are covered by the open meetings mandate of this constitutional provision with the exception of the judiciary and the state Legislature, which has its own constitutional provision requiring access. The only exceptions are those established by law or by the Constitution. The complete text of Art. I, s. 24, Fla. Const., may be found in Appendix A of this manual.

#### B. WHAT AGENCIES ARE COVERED BY THE SUNSHINE LAW?

##### 1. Are all public agencies subject to the Sunshine Law?

The Government in the Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision." The statute thus applies to public *collegial* bodies within this state, at the local as well as state level. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). It is equally applicable to elected and appointed boards or commissions. AGO 73-223.

Florida courts have stated that it was the Legislature's intent to extend application of the Sunshine Law so as to bind "every 'board or commission' of the state, or of any county or political subdivision over which it has dominion and control." *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). *And see Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980) (legislative requirement that certain board meetings must be open to the public does not imply that the board could meet privately to discuss other matters).

Based upon the specific terms of the statute and the "dominion and control" test approved by the courts, the following are some of the entities which the Attorney General's Office has concluded are subject to the Sunshine Law:

**civil service boards**--AGOs 79-63, 73-370, 71-29 (municipal) and 80-27 (sheriff);

**charter school personnel board**--AGO 10-14;

**county and municipal boards**--AGOs 04-35 (city risk management committee), 85-55 (downtown redevelopment task force), 83-43 (board of adjustment), 76-230 (beautification committee), and 73-366 (board of governors of municipal country club);

**interlocal agreement boards**--AGOs 84-16 (five-county consortium created pursuant to Florida Interlocal Cooperation Act), 82-66 (regional sewer facility board), 76-193 (Central Florida Commission on the Status of Women), and Inf. Op. t o N icoletti, N o vember 1 8, 19 87 (Loxahatchee Council of Governments, Inc.);

**regulatory boards**--AGOs 76-225 (accountancy), and 74-84 (dentistry);

**special district boards**--AGOs 74-169 (fire control district), and 73-08 (mosquito control district).

## **2. Are advisory boards which make recommendations or committees established only for fact-finding subject to the Sunshine Law?**

### **a. Publicly created advisory boards which make recommendations**

Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them. See *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974) (citizen planning committee appointed by city council to assist in revision of zoning ordinances subject to Sunshine Law). The *Gradison* court, concluding that the committee served as the alter ego of the council in making tentative decisions, stated that "any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law." *Id.* at 476. *Accord Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (committee which compiled a report that was perfunctorily accepted by the board made a significant ruling affecting decision-making process and was subject to s. 286.011; "ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law"); *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994) (committee established by county commission to negotiate lease agreement subject to s. 286.011: "the Sunshine Law equally binds all members of



governmental bodies, be they advisory committee members or elected officials"); and *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county ordinance to serve in an advisory capacity to the county manager).

The Attorney General's Office has issued numerous opinions discussing the application of the Sunshine Law to advisory committees. The following are some of the advisory committees which have been found to be subject to the Sunshine Law:

**community issues advisory bodies**--AGOs 98-13 (citizen advisory committee appointed by city council to make recommendations to the council regarding city government and city services), 93-41 (criminal justice commission established by county ordinance to develop and make recommendations on criminal justice issues in the county), and 85-55 (community certification committee organized by city to act on its behalf in seeking designation of city as a blue chip community under a Department of Commerce program);

**employee or personnel advisory bodies**--AGOs 96-32 (employee advisory committee established pursuant to special law), 92-26 (committee responsible for making recommendations to city council on personnel matters), and 84-70 (grievance committees established pursuant to county personnel manual and responsible for bringing about "a fair and equitable settlement of the complaint");

**education advisory bodies**--AGOs 03-28 (business assistance center advisory council created by community college board of trustees), 01-84 (school advisory councils created pursuant to former s. 229.58 [now s. 1001.452], F.S.), and 74-267 (Council of Deans appointed by state university president);

**legislation implementation advisory bodies**--AGOs 92-79 (advisory committee authorized by statute to assist state agency with the implementation of legislation), and 85-76 (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation);

**planning or property acquisition advisory bodies**--AGOs 05-07 (lake restoration council legislatively created to advise water management district board), 02-24 (vegetation committee created by city code to make recommendations to city council and planning department regarding vegetation and proposed development), and 86-51 (land selection committee appointed by water management district to create proposed land acquisition list).

The Sunshine Law applies to advisory committees appointed by a single public official as well as those appointed by a collegial board. See, e.g., *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (Sunshine Law applies to ad hoc advisory committee appointed by university president to screen applications and make recommendations for position

of law school dean as committee, in deciding which applicants to reject from further consideration, performed a policy-based, decision-making function); *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by community college purchasing director to consider and rank various contract proposals must meet in the Sunshine); and *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) (Sunshine Law governs advisory group created by city manager to assist in screening applications and to recommend several applicants for the position of chief of police). *Accord* AGOs 05-05 (fact that advisory group was created by chief of police and not city commission and its recommendations were made to police chief would not remove group from ambit of the Sunshine Law), 87-42 (ad hoc committee appointed by mayor to meet with Chamber of Commerce and draft proposal for transfer of city property); and Inf. Op. to Lamar, August 2, 1993 (transition team made up of citizens appointed by mayor to make recommendations on city government's reorganization).

## **b. Fact-finding committees**

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. When a committee has been established strictly for, and conducts only, fact-finding activities, *i.e.*, strictly information gathering and reporting, the activities of that committee are not subject to s. 286.011, F.S. *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). *Accord* AGO 95-06 (when a group, on behalf of a public entity, functions solely as a fact-finder or information gatherer with no decision-making authority, no "board or commission" subject to the Sunshine Law is created). "In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is exercising part of the decision-making function by sorting through options and making recommendations to the governmental body." Inf. Op. to Randolph, June 10, 2010.

For example, the court in *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976), held that a fact-finding committee appointed by a community college president to report to him on employee working conditions was not subject to the Sunshine Law. *And see* *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983); and *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law did not apply to informal meetings of staff where the discussions were "merely informational," where none of the individuals attending the meetings had any decision-making authority during the meetings, and where no formal action was taken or could have been taken at the meetings).

This 'fact-finding' exception, however, applies only to advisory committees and not to boards that have "ultimate decisionmaking authority." *See* *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008), holding that the fact-finding exception did not apply to a school board as the ultimate decision-making authority; thus the board could not take a fact-finding tour without complying with the Sunshine Law even though school board members were separated from each other by several rows of seats, did not discuss their preferences or opinions, and no vote was taken during the trip.

When a committee has a decision-making function in addition to fact-finding, the Sunshine Law is applicable. See *Wood v. Marston*, *supra* at 938, recognizing that while a "search and screen" committee appointed by a university president had a fact-gathering role in soliciting and compiling applications, the committee also "had an equally undisputed decision-making function in screening the applicants" by deciding which of the applicants to reject from further consideration, and thus was subject to the Sunshine Law. *And see Roscow v. Abreu*, No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004) (committee created by the state department of transportation and composed of officials from state, local and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway).

Similarly, in AGO 94-21, the Attorney General's Office advised that the Sunshine Law governed the meetings of a negotiating team that was created by a city commission to negotiate with a sports organization on behalf of the city. Even though the resolution creating the team provided that the negotiations were subject to ratification and approval by the city commission, the team was authorized to do more than mere fact-finding in that it would be "participating in the decision-making process by accepting some options while rejecting others for presentment of the final negotiations to the city commission." *Id.*

### **3. Are private organizations subject to the Sunshine Law?**

A more difficult question is presented with private organizations which are providing services to state or local government. The Attorney General's Office has recognized that private organizations generally are not subject to the Sunshine Law unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. AGO 07-27.

Thus, for example, the Sunshine Law does not apply to a private nonprofit corporation established by local business people to foster economic development where no delegation of legislative or governmental functions by any local governmental entity has occurred and the corporation does not act in an advisory capacity to any such entity. Inf. Op. to Hatcher and Thornton, September 15, 1992. *Accord* Inf. Op. to Gaetz and Coley, December 17, 2009. *Compare* AGO 10-30, concluding that a private economic advisory council, delegated the responsibility of accomplishing the county's economic development strategic plan, was subject to the Sunshine Law. *And see* Inf. Ops. to Armesto, September 18, 1979 (meetings of political parties are not subject to s. 286.011, F.S.), and Fasano, June 7, 1996 (Sunshine Law does not apply to meetings of a homeowners' association board).

However, as discussed below, the Sunshine Law applies to private entities created by law or by public agencies, and to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.

### **a. Private entities created pursuant to law or by public agencies**

The Supreme Court has stated that "[t]he Legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which [the Legislature] has dominion or control." *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971). Recognizing that the Sunshine Law should be liberally construed to give effect to its public purpose, the Court has applied the Sunshine Law to a citizen's advisory committee established by, and active on behalf of, a city council. See *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 478 (Fla. 1974).

Applying these principles, the Attorney General's Office has concluded that the following private organizations are subject to the Sunshine Law: Enterprise Florida, Inc., board of directors, created by statute which prescribed its membership, powers and duties, AGO 92-80; Prison Rehabilitative Industries and Diversified Enterprises [PRIDE], a nonprofit corporation established by state law to manage correctional work programs of the Department of Corrections, AGO 04-44; John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions, A GO 92 -53; education direct-support organizations, A GO 05-27 and Inf. Op. to Chiumento, June 27, 1990 ; not-for-profit corporation created by a city redevelopment agency to assist in the implementation of its redevelopment plan, A GO 97-17; Council on Aging of St. Lucie, Inc., a nonprofit organization incorporated pursuant to the "Community Care for the Elderly Act," AGO 98-55; Florida High School Activities Association, Inc., legislatively designated as the governing organization of athletics in Florida public schools, A GO 98 -42; board of trustees of an insurance trust fund created pursuant to collective bargaining agreement between a city and the employee union, AGO 98-01; and Inf. Op. to Martelli, July 20, 2009 (State Fair Authority, created by statute as a public corporation).

### **b. Private entities providing services to public agencies**

Much of the litigation regarding the application of the open government laws to private organizations has been in the area of public records, and the courts have often looked to Ch. 119, F.S., in determining the applicability of the Sunshine Law. See *Cape Coral Medical Center, Inc. v. News-Press Publishing Company, Inc.*, 390 So. 2d 1216, 1218 n.5 (Fla. 2d DCA 1980) (inasmuch as the policies behind Ch. 119, F.S., and s. 286.011, F.S., are similar, they should be read together); *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983); and *Krause v. Reno*, 366 So. 2d 1244, 1252 (Fla. 3d DCA 1979).

As the courts have emphasized in analyzing the application of Ch. 119, F.S., to entities doing business with governmental agencies, the mere receipt of public funds by private corporations, is not, standing alone, sufficient to bring the organization within the ambit of the open government requirements. See, e.g., *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992) (records of private architectural firm not subject to Ch. 119, F.S., merely because firm contracted with school board). Similarly, a private corporation performing services for a public agency and receiving compensation for such services is not by virtue of this relationship alone subject to the Sunshine Law unless the public agency's governmental

or legislative functions have been delegated to it. *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law); and AGO 98-47 (Sunshine Law does not apply to private nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available through a city). Cf. AGO 80-45 (the receipt of Medicare, Medicaid, government grants and loans, or similar funds by a private nonprofit hospital does not, standing alone, subject the hospital to the Sunshine Law); Inf. Op. to Gaetz and Coley, December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Sunshine Law).

Although private organizations generally are not subject to the Sunshine Law, open meetings requirements can apply if the public entity has delegated "the performance of its public purpose" to the private entity. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 382-383 (Fla. 1999). And see *Mae Volen Senior Center, Inc. v. Area Agency on Aging*, 978 So. 2d 191 (Fla. 4th DCA 2008), review denied, 1 So. 3d 172 (Fla. 2009) (area agencies on aging which are public or private nonprofit organizations designated by the Department of Elder Affairs to coordinate and administer department programs and to provide, through contracting agencies, services for the elderly within a planning and service area are subject to Ch. 119 and s. 286.011, F.S., when considering any contracts requiring the expenditure of public funds). Compare *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 927 So. 2d 961 (Fla. 5th DCA 2006), in which the Fifth District applied the "totality of factors" test set forth in *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, supra, and determined that a private corporation that purchased a hospital it had previously leased from a public hospital authority was not "acting on behalf of" a public agency and therefore was not subject to the Public Records Act or the Sunshine Law.

The Attorney General's Office has found meetings of the following entities to be subject to the Sunshine Law: Family Services Coalition, Inc., board of directors, performing services for the Department of Children and Family Services which services would normally be performed by the department, AGO 00-03; local health councils, whose duties are prescribed by statute and which provide an integral role in the Agency for Health Care Administration's decision-making process in providing for coordinated health care services planning, AGO 07-27; property owners association, delegated the performance of services otherwise performed by a municipal services taxing unit, AGO 07-44; boards of directors of volunteer fire departments that provide firefighting services to the county and use facilities and equipment acquired with county funds, AGO 04-32; community land trust, which contracted with city to carry out city's affordable housing responsibilities and screen applicant files, AGO 08-66; Astronauts Memorial Foundation when performing duties funded under the General Appropriations Act, AGO 96-43; nonprofit organization designated by county to fulfill role of county's dissolved cultural affairs council, AGO 98-49; nonprofit corporation specifically created to contract with county for operation of a public golf course on county property acquired by public funds, AGO 02-53; downtown redevelopment task force which, although not appointed by city commission, stood in place of the city commission when considering downtown improvement issues, AGO 85-55; nongovernmental advisory committee, which had

been impliedly delegated the authority to act on behalf of the county commission in a review of the zoning code, AGO 83-95; committee selected by a county bar association on behalf of the school board to screen applicants and make recommendations for the position of school board attorney, AGO 77-43. *Cf.* Inf. Op. to Bedell, December 28, 2005 (private nonprofit organization which entered into an agreement with a city to operate a theater, received city funding in the form of a loan for this purpose, and leased property from the city, should comply with the Sunshine Law when holding discussions or making decisions regarding the theater).

On the other hand, meetings of a county volunteer firefighters association for the purpose of providing a forum for county volunteer fire departments to meet and discuss common county firefighting concerns and issues are not subject to the Sunshine Law. AGO 04-32. *Cf.* AGO 00-08 (meetings of the Lee County Fire Commissioner's Forum, a nonprofit entity created by fire districts as a vehicle for networking and discussion of common concerns, would be subject to the Sunshine Law if the Forum operates as a collegial body for incipient decision-making); and Inf. Op. to Wiles, February 14, 2002 (if the State University Presidents Association operates as a collegial body for incipient decision-making, then the association would be subject to the Sunshine Law; if the association, however, merely provides an opportunity to network and discuss common concerns, the association would not necessarily be subject to the Sunshine Law).

#### **c. Homeowners' associations**

The Sunshine Law does not generally apply to meetings of a homeowners' association board of directors. Inf. Op. to Fasano, June 7, 1996. Other statutes govern access to records and meetings of these associations. See, e.g., s. 720.303(2), F.S. (homeowners' association board of directors and any committee making a final decision regarding the expenditure of association funds or any body having the authority to approve architectural plans involving a specific piece of property owned by a community resident); s. 18.112(2)(c), F.S. (condominium board of administration); s. 719.106(1)(c), F.S. (cooperative board of administration); and s. 723.078(2)(c), F.S. (mobile home park homeowners' association board of directors). *Cf.* AGOs 99-53 (an architectural review committee of a homeowners' association is subject to the Sunshine Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits), and 07-44 (property owners association subject to open government laws when acting on behalf of a municipal services taxing unit).

#### **4. Are federal agencies subject to the Sunshine Law?**

Federal agencies, *i.e.*, agencies created under federal law, operating within the state, do not come within the purview of the state Sunshine Law. AGO 71-191. See also *Cincinnati Gas and Electric Company v. General Electric Company*, 854 F.2d 900 (6th Cir. 1988), *cert. denied*, 109 S.Ct. 1171 (1989) (public has no right of access to negotiations leading to settlement of a case in federal court).

Thus, meetings of a federally-created private industry council are not subject to s. 286.011, F.S. AGO 84-16. *Cf.* Inf. Op. to Knox, January 6, 2005 (St. Johns River

Alliance, Inc., a non-profit corporation formed to help carry out the federal American Heritage Rivers Initiative and the associated intergovernmental Partnership Agreement among state, local and federal governmental entities, is subject to s. 286.011, F.S., requirements); Inf. Op. to Green, December 11, 1998 (tri-state river commission established pursuant to *state and* federal law is subject to the Sunshine Law); and Inf. Op. to Markham, September 10, 1996 (technical oversight committee established by *state* agencies as part of settlement agreement in federal lawsuit subject to Sunshine Law).

## **5. Does the Sunshine Law apply to the Governor and Cabinet?**

Section 286.011, F.S., applies to those functions of the Governor and Cabinet which are statutory responsibilities as opposed to duties arising under the Constitution. Thus, the Governor and Cabinet in dispensing pardons and the other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to s. 286.011, F.S. *Cf. In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (Constitution sufficiently prescribes rules for the manner of exercise of gubernatorial clemency power; legislative intervention is, therefore, unwarranted).

Section 286.011, F.S., however, does apply to the Governor and Cabinet sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the "dominion and control" of the Legislature.

Moreover, Art. I, s. 24, Fla. Const., requires that meetings of "any collegial public body of the executive branch of state government" be open and noticed to the public. The only exceptions to this constitutional right of access are those meetings which have been exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or which are specifically closed by the Constitution. *And see* Art. III, s. 4(e), Fla. Const., providing, in relevant part, that "all prearranged gatherings, between . . . the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

## **6. Does the Sunshine Law apply to commissions created by the Constitution?**

Boards or commissions created by the Constitution which prescribes the manner of the exercise of their constitutional powers are not subject to s. 286.011, F.S., when carrying out such constitutionally prescribed duties. *See Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977) (judicial nominating commissions are not subject to s. 286.011, F.S.). *Cf. In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (clemency power does not exist by virtue of legislative enactment; rather Constitution sufficiently prescribes rules for the manner of exercise of the power); and AGO 77-65 (Ch. 120, F.S., inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const.). *Compare Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission, which Art.

IV, s. 8(c), Fla. Const., recognizes may be created by *law*, is subject to s. 286.011, F.S.

However, Art. I, s. 24, Fla. Const., establishes a constitutional right of access to meetings of any collegial public body of the executive branch of state government by providing that such meetings must be open and noticed to the public unless exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution.

## **7. Does the Sunshine Law apply to the Legislature?**

Article I, s. 24, Fla. Const., requires that meetings of the Legislature be open and noticed as provided in Art. III, s. 4(e), Fla. Const., except with respect to those meetings exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution.

Pursuant to Art. III, s. 4(e), Fla. Const., the rules of procedure of each house of the Legislature must provide that all legislative committee and subcommittee meetings of each house and joint conference committee meetings be open and noticed. Such rules must also provide:

[A]ll prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

The votes of members during the final passage of legislation pending before a committee and, upon request of two members of a committee or subcommittee, on any other question, must be recorded. Article III, s. 4(c), Fla. Const.

## **8. Does the Sunshine Law apply to the judiciary?**

The open meetings provision found in Art. I, s. 24, Fla. Const., does not include meetings of the judiciary. In addition, separation of powers principles make it unlikely that the Sunshine Law, a legislative enactment, could apply to the courts established pursuant to Art. V, Fla. Const. AGO 83-97. Thus, questions of access to judicial proceedings usually arise under other constitutional guarantees relating to open and public judicial proceedings, Amend. VI, U.S. Const., and freedom of the press, Amend. I, U.S. Const. However, a circuit conflict committee established by the *Legislature* to approve attorneys handling conflict cases is subject to the Sunshine Law, even though the chief judge or his or her designee is a member, because the "circuit conflict committees are created by the Legislature, subject to its dominion and control." AGO



83-97. *And see Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to quasi-judicial functions; a board exercising quasi-judicial functions is not a part of the judicial branch of government).

#### **a. Criminal proceedings**

A court possesses the inherent power to control the conduct of proceedings before it. *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982); and *State ex rel. Miami Herald Publishing Company v. McIntosh*, 340 So. 2d 904 (Fla. 1977). A three-pronged test for criminal proceedings has been developed to provide "the best balance between the need for open government and public access, through the media, to the judicial process, and the paramount right of a defendant in a criminal proceeding to a fair trial before an impartial jury." *Lewis, supra* at 7. Closure in criminal proceedings is acceptable only when:

- 1) it is necessary to prevent a serious and imminent threat to the administration of justice;
- 2) no alternatives are available, other than change of venue, which would protect the defendant's right to a fair trial; and
- 3) closure would be effective in protecting the defendant's rights without being broader than necessary to accomplish that purpose.

*And see Bundy v. State*, 455 So. 2d 330, 339 (Fla. 1984), noting that the trial court properly used a combination of alternative remedies for possible prejudicial effects of pretrial publicity instead of barring public access to pretrial proceedings.

Article I, s. 16(b), Fla. Const., provides that victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused. *See Sireci v. State*, 587 So. 2d 450 (Fla. 1991), *cert. denied*, 112 S.Ct. 1500 (1992) (court did not err by allowing the wife and son of the victim to remain in the courtroom after their testimony). *See also* s. 960.001(1)(e), F.S., restricting exclusion of victims, their lawful representatives, or their next of kin.

#### **b. Civil proceedings**

Stressing that *all* trials, civil and criminal, are public events and that there is a strong presumption of public access to these proceedings, the Supreme Court in *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988), set forth the following factors which must be considered by a court in determining a request for closure of civil proceedings:

- 1) a strong presumption of openness exists for all court proceedings;
- 2) both the public and news media have standing to challenge any closure order with the burden of proof being on the party seeking closure;
- 3) closure should occur only when necessary
  - a) to comply with established public policy as 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.
- 4) whether a reasonable alternative is available to accomplish the desired result and if none exists, the least restrictive closure necessary to accomplish its purpose is used;
  - 5) the presumption of openness continues through the appellate review process and the party seeking closure continues to have the burden to justify closure.

*And see Amendments to the Florida Family Law Rules of Procedure*, 723 So. 2d 208, 209 (Fla. 1998), reiterating support for the *Barron* standards and stating that "public access to court proceedings and records [is] important to assure testimonial trustworthiness; in providing a wholesome effect on all officers of the court for purposes of moving those officers to a strict conscientiousness in the performance of duty; in allowing nonparties the opportunity of learning whether they are affected; and in instilling a strong confidence in judicial remedies, which would be absent under a system of secrecy"; and *BDO Seidman v. Banco Espirito Santo International, Ltd.*, 34 F.L.W. D739 (Fla. 3d DCA April 8, 2009) (test for sealing of court proceedings and records is set forth in *Barron v. Florida Freedom Newspapers, Inc.*).

### **c. Depositions**

While the courts have recognized that court proceedings are public events and the public generally has access to such proceedings, the general public and the press do not have a right under the First Amendment or the rules of procedure to attend discovery depositions. See *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 380 (Fla. 1987), *cert. denied*, 108 S.Ct. 346 (1987), stating that while discovery depositions in criminal cases are judicially compelled for the purpose of allowing parties to investigate and prepare, they are not judicial proceedings. *Accord Post-Newsweek Stations, Florida, Inc. v. State*, 510 So. 2d 896 (Fla. 1987) (media not entitled to notice and opportunity to attend pretrial discovery depositions in criminal cases); and *SCI Funeral Services of Florida, Inc. v. Light*, 811 So. 2d 796 (Fla. 4th DCA 2002) (upholding protective order closing depositions to the media based on privacy concerns). *Cf. Lewis v. State*, 958 So. 2d 1027 (Fla. 5th DCA 2007) (while *Burk* applied to unfiled depositions made during an ongoing, active criminal prosecution, materials related to defendant's prosecution, including depositions, are subject to disclosure after the case becomes final).

### **d. Florida Bar grievance proceedings**

An attorney's claim that the Florida Bar violated the Sunshine Law by refusing to allow him to attend a grievance committee meeting of the Bar was rejected in *Florida*

*Bar v. Committee*, 916 So. 2d 741, 744-745 (Fla. 2005): "The grievance committee meetings of the Bar are private, and therefore the Bar is justified in prohibiting [the attorney] from attendance." The Court reiterated its holding in *The Florida Bar: In re Advisory Opinion*, 398 So. 2d 446, 447 (Fla. 1981), that "[n]either the legislature nor the governor can control what is purely a judicial function."

#### **e. Grand juries**

Section 905.24, F.S., provides that "[g]rand jury proceedings are secret"; thus, these proceedings are not subject to s. 286.011, F.S. See *Clein v. State*, 52 So. 2d 117, 120 (Fla. 1951) (it is the policy of the law to shield the proceedings of grand juries from public scrutiny); *In re Getty*, 427 So. 2d 380, 383 (Fla. 4th DCA 1983) (public disclosure of grand jury proceedings "could result in a myriad of harmful effects"); and AGO 73-177, stating that it is the public policy of the state to keep secret the proceedings of the grand jury. The grand jury has also been referred to as a "coordinate branch of the judiciary, and as an arm, appendage, or adjunct of the circuit court." *State ex rel. Christian v. Rudd*, 302 So. 2d 821, 828 (Fla. 1st DCA 1974). Cf. *Butterworth v. Smith*, 110 S.Ct. 1376 (1990), striking down a Florida statute to the extent that it prohibited a witness from disclosing his own testimony before a grand jury after the grand jury's term has ended.

In addition, hearings on certain grand jury procedural motions are closed. The procedural steps contemplated in s. 905.28(1), F.S., for reports or presentments of the grand jury relating to an individual which are *not* accompanied by a true bill or indictment, are cloaked with the same degree of secrecy as is enjoyed by the grand jury in the receipt of evidence, its deliberations, and final product. Therefore, a newspaper has no right of access to grand jury procedural motions and to the related hearing. *In re Grand Jury, Fall Term 1986*, 528 So. 2d 51 (Fla. 2d DCA 1988). And see *Palm Beach Newspapers, Inc., v. Doe*, 460 So. 2d 406 (Fla. 4th DCA 1984) (hearing ancillary or related to a grand jury session constitutes a proceeding which comes within the protection of s. 905.24); and *In re Subpoena to Testify Before Grand Jury Directed to Custodian of Records*, 864 F.2d 1559 (11th Cir. 1989) (while a court must hold a hearing and give reasons for closure of criminal court proceedings, a court is not required to give newspapers a hearing and give reasons for closure of grand jury proceedings).

#### **f. Judicial nominating commissions/Judicial Qualifications Commission**

Judicial nominating commissions for the Supreme Court of Florida, the district courts of appeal, or for a judicial circuit for the trial courts within the circuit are not subject to the Sunshine Law. *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977). Article V, s. 11(d), Fla. Const., however, requires that except for its deliberations, the proceedings of a judicial nominating commission and its records are open to the public. While the deliberations of a commission are closed, such a limitation appears to be applicable to that point in the proceedings when the commissioners are weighing and examining the reasons for and against a choice. Inf. Op. to Russell, August 2, 1991.

The statewide judicial nominating commission for workers' compensation judges,

however, is not a judicial nominating commission as contemplated by the Constitution; thus, such a commission created pursuant to the workers' compensation law is subject to s. 286.011, F.S. AGO 90-76.

Proceedings of the Judicial Qualifications Commission are confidential. However, upon a finding of probable cause and the filing of formal charges against a judge or justice by the commission with the Clerk of the Supreme Court, all further proceedings of the commission are public. Article V, s. 12(a)(4), Fla. Const.

#### **g. Mediation proceedings**

Court-ordered mediation and arbitration are to be conducted according to the rules of practice and procedure adopted by the Florida Supreme Court. Sections 44.102(1) and 44.103(1), F.S. Florida Rule of Civil Procedure 1.720(e) provides that the mediator may meet and consult privately with any party or parties or their counsel. *And see* Rule 10.360(a), Florida Rules For Certified and Court-Appointed Mediators ("A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties.").

Public access to court-ordered mediation proceedings between two cities and a county was raised in *News-Press Publishing Company, Inc. v. Lee County, Florida*, 570 So. 2d 1325 (Fla. 2d DCA 1990). Initially, the judge required the parties to have present a representative "with full authority to bind them"; however, after the media objected to the closure of the mediation proceeding, the judge amended the order to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court noted that no two members of any of the public boards would be present at the mediation proceedings and that the mediation's narrow scope did not give rise to a substantial delegation affecting the boards' decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. *See also O'Connell v. Board of Trustees*, 1 F.L.W. Supp. 285 (Fla. 7th Cir. Ct. Feb. 9, 1993) (as to public agencies, mediation is subject to the Sunshine Law; thus, no more than one member of a collegial body should attend the mediation conference). *And see* Fla. R. Civ. P. 1.720(b), stating that "[i]f a party to mediation is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity." *Accord* Fla. R. App. P. 9.720(a). *Cf.* AGO 06-03 (closed attorney-client session may not be held to discuss settlement negotiations on an issue that is the subject of ongoing mediation pursuant to a partnership agreement between a water management district and others); and Inf. Op. to McQuagge, February 13, 2002 (mediation meetings conducted pursuant to the Florida Governmental Conflict Resolution Act, ss. 164.101-164.1061, F.S., which involve officials or representatives of local governmental entities who have the authority to negotiate on behalf of that governmental entity are subject to the Sunshine Law).

#### **9. Does the Sunshine Law apply to staff?**

Meetings of staff of boards or commissions covered by the Sunshine Law are not

ordinarily subject to s. 286.011, F.S. See, e.g., *Occidental Chemical Company v. Mayo*, 351 So. 2d 336 (Fla. 1977), *disapproved in part on other grounds, Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992); *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996); and AGO 89-39.

Thus, a committee composed of staff that is responsible for advising and informing the decision-maker through fact-finding consultations is not subject to the Sunshine Law. *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976) (meetings of committee appointed by community college president to report on employee working conditions not subject to Sunshine Law). *And see Knox v. District School Board of Brevard*, 821 So. 2d 311, 315 (Fla. 5th DCA 2002), holding that the Sunshine Law did not apply to a group of school board employees meeting with an area superintendent to review applications, which were then sent by the area superintendent to the school superintendent with her recommendation: "[A] Sunshine violation does not occur when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties."

Similarly, the court in *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000), ruled that the Sunshine Law did not apply to informal meetings of staff where the discussions were "merely informational," where none of the individuals attending the meetings had any decision-making authority during the meetings, and where no formal action was taken or could have been taken at the meetings. *And see Baker v. Florida Department of Agriculture and Consumer Services*, 937 So. 2d 1161 (Fla. 4th DCA 2006), *review denied*, 954 So. 2d 27 (2007) (no violation of Sunshine Law when agency employees conducted investigation into licensee's alleged failure to follow state law and an assistant director made the decision to file a complaint as "[c]ommunication among administrative staff in fulfilling investigatory, advisory, or charging functions does not constitute a 'Sunshine' Law violation"); *Molina v. City of Miami*, 837 So. 2d 462, 463 (Fla. 3d DCA 2002) (police discharge of firearms committee not subject to Sunshine Law because the committee "is nothing more than a meeting of staff members who serve in a fact-finding advisory capacity to the chief"); *J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law not applicable to Department of Children and Families permanency staffing meetings conducted to determine whether to file a petition to terminate parental rights); *Jordan v. Jenne*, 938 So. 2d 526 (Fla. 4th DCA 2006) (Sunshine Law did not apply to professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general as to whether the charges should be sustained, dismissed, or should be deferred for more information); and *McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009) (Internal Affairs memorandum containing findings and recommendations circulated to senior officials for review and comment before submission to the sheriff for a decision on disciplinary action did not constitute a meeting under the Sunshine Law since officials only provided a recommendation but did not deliberate with the sheriff or have decision-making authority).

However, when a staff member ceases to function in a staff capacity and is appointed to a committee which is given "a policy-based decision-making function," the staff member loses his or her identity as staff while working on the committee and the Sunshine Law applies to the committee. See *Wood v. Marston*, 442 So. 2d 934, 938

(Fla. 1983); and *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners*, 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002) (when public officials delegate their fact-finding duties and decision-making authority to a committee of staff members, those individuals no longer function as staff members but "stand in the shoes of such public officials" insofar as the Sunshine Law is concerned).

In *Wood v. Marston, supra*, the Florida Supreme Court recognized that the function of staff is to inform and advise the decision-maker. However, the Court concluded that a faculty committee charged with seeking applicants for a position to be appointed by the university president, by screening applicants and deciding which of the applicants to reject from further consideration performed a policy-based decision-making function and thus was subject to the Sunshine Law. Even though the faculty as a whole had the authority to review and reject the decisions of the committee, this factor "did not render the committee's function any less policy-based or decision-making." *Id.* at 938-939.

It is therefore the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law. *Wood v. Marston, supra*. See *News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), concluding that it would be "ludicrous" to hold that "a certain committee is governed by the Sunshine Law when it consists of members of the public, who are presumably acting for the public, but hold a committee may escape the Sunshine Law if it consists of individuals who owe their allegiance to, and receive their salaries from, the governing authority."

Thus, in *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee composed primarily of staff that was created by a college purchasing director to assist and advise her in evaluating contract proposals was subject to the Sunshine Law. The committee's job to "weed through the various proposals, to determine which were acceptable and to rank them accordingly" was sufficient to bring the committee within the scope of the Sunshine Law. "Governmental advisory committees which have offered up structured recommendations such as here involved--at least those recommendations which eliminate opportunities for alternative choices by the final authority, or which rank applications for the final authority--have been determined to be agencies governed by the Sunshine Law." *Id.* at 1101. See also AGOs 05-06 (city development review committee, composed of several city officials and representatives of various city departments to review and approve development applications, is subject to the Sunshine Law), and 86-51 (land selection committee appointed by water management district and delegated decision-making authority to consider projects for inclusion on a list of proposed acquisition projects must comply with Sunshine Law "even though such committee may be composed entirely of district staff and its decisions and recommendations are subject to further action by the district's governing board").

Similarly, in *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of a pre-termination conference panel established pursuant to a county ordinance and composed of a department head, personnel director and equal opportunity director should have been held in the Sunshine. Even though the county

administrator had the sole authority to discipline employees, that authority had been delegated to the department head who in turn chose to share that authority with the other members of the panel. "Because it is undisputed that the staff gave advice on the ultimate decision to terminate" an employee during a closed-door session at which the decision to terminate was made, the closing of the deliberations violated the Sunshine Law. *Id.* at 14. *Compare Jordan v. Jenne*, 938 So. 2d at 530 (Sunshine Law did not apply to a professional standards committee responsible for reviewing charges against sheriff's deputy and making recommendations to the inspector because inspector general made the "ultimate decision" on discipline and did not deliberate with the committee).

#### **10. Does the Sunshine Law apply to members of public boards who also serve as administrative officers or employees?**

In some cases, members of public boards also serve as administrative officers or employees. The Sunshine Law is not applicable to discussions of those individuals when serving as administrative officers or employees, provided such discussions do not relate to matters which will come before the public board on which they serve.

For example, the Sunshine Law would not apply to meetings between the mayor and city commissioners where a mayor performs the duties of city manager and the city commissioners individually serve as the head of a city department when the meeting is held solely by these officers in their capacity as department heads for the purpose of coordinating administrative and operational matters between executive departments of city government for which no formal action by the governing body is required or contemplated. Those matters which normally come before, or should come before, the city commission for discussion or action, however, must not be discussed at such meetings. AGO 81-88. *Accord* AGOs 83-70 and 75-210 (mayor may discuss matters with individual city council member which concern his administrative functions and would not come before the council for consideration and further action).

Similarly, a conversation between a state attorney and sheriff about a specific criminal investigation involving an assault related to a youth gang would not violate the Sunshine Law even though both officials are members of a county criminal justice commission and the commission is studying and making recommendations on the problem of youth gangs in the community. AGO 93-41 *And see* Inf. Op. to Hughes, February 17, 1995; and Inf. Op. to Boyd, March 14, 1994 (Sunshine Law not applicable to school faculty meetings simply because two or more members of school advisory council who are also faculty members attend the faculty meeting as long as council members refrain from discussing matters that may come before the council for consideration).

### **C. WHAT IS A MEETING SUBJECT TO THE SUNSHINE LAW?**

#### **1. Number of board members required to be present**

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be

subject to s. 286.011, F.S. Instead, 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. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). *And see City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); and *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969). Thus, discussions between two members of a three-member complaint review board regarding their selection of a third member must be conducted in accordance with the Sunshine Law. AGO 93-79. *Cf.* AGO 04-58 ("coincidental unscheduled meeting of two or more county commissioners to discuss emergency issues with staff" during a declared state of emergency is not subject to s. 286.011 if the issues do not require action by the county commission).

It is the how and the why officials decided to so act which interests the public, not merely the final decision. As the court recognized in *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985):

Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire *decision-making process* that the legislature intended to affect by the enactment of the statute before us.

## **2. Circumstances in which the Sunshine Law may apply to a single individual or where two board members are not physically present**

Section 286.011, F.S., applies to public boards and commissions, *i.e.*, collegial bodies, and has been applied to meetings of "two or more members" of the same board or commission when discussing some matter which will foreseeably come before the board or commission. Therefore, the statute does not ordinarily apply to an *individual* member of a public board or commission or to public officials who are not board or commission members. *Inf. Op. to Dillener*, January 5, 1990 (Sunshine Law not normally applicable to meeting of town council member with private citizens) *See City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989); *Deerfield Beach Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988) (requisite to application of the Sunshine Law is a meeting between two or more public officials); and *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976). *Cf. Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991), *review denied*, 598 So. 2d 75 (Fla. 1992), stating that *ex parte* (*i.e.*, from one side only) communications in quasi-judicial proceedings raise a presumption that the contact was prejudicial to the decision-making process; and s. 286.0115, F.S., enacted in response to the *Jennings* case, relating to access to local public officials in quasi-judicial proceedings. *Compare City of Hollywood v. Hakanson*, 866 So. 2d 106 (Fla. 4th DCA 2004) (comments made at a public city commission meeting which related to a terminated employee who had a pending appeal did not constitute an offending *ex parte* communication simply because a civil service board member was in the audience).

Certain factual situations, however, have arisen where, in order to assure public access to the decision-making processes of public boards or commissions, it has been



necessary to conclude that the presence of two individuals of the same board or commission is not necessary to trigger application of s. 286.011, F.S. As stated by the Supreme Court, the Sunshine Law is to be construed "so as to frustrate all evasive devices." *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

**a. Written correspondence between board members**

A commissioner may send a written report to other commissioners on a subject that will be discussed at a public meeting without violating the Sunshine Law, if prior to the meeting, there is no interaction related to the report among the commissioners and the report, which is subject to disclosure under the Public Records Act, is not being used as a substitute for action at a public meeting. AGO 89-23. *And see* AGO 01-20 (e-mail communication of factual background information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council members' comments or responses on subjects requiring council action). *Cf.* Inf. Op. to Kessler, November 14, 2007 (procedural rule requiring county commissioner to make a written request to commission chair to withdraw an item from the consent agenda does not violate the Sunshine Law).

If, however, the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to s. 286.011, F.S. AGO 90-03. *See also* AGO 96-35-(school board member may prepare and circulate informational memorandum or position paper to other board members; however, use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law); Inf. Op. to Blair, June 29, 1973 (memorandum reflecting board member's view on a pending board issue circulated among the board members with each indicating approval or disapproval that, upon completion of the signatures, has the effect of becoming the official action of the board violates the Sunshine Law).

In addition, the Attorney General's Office has expressed concern that a process whereby board members distribute their own position papers on the same subject to other members is "problematical" and should be discouraged. *See* AGO 01-21 (city council's discussions and deliberations on matters coming before the council must occur at a duly noticed city council meeting and the circulation of position statements must not be used to circumvent the requirements of the statute). *Accord* AGO 07-35; *and see* AGO 08-07 (city commissioner may post comment regarding city business on blog or message board; however, any subsequent postings by other commissioners on the subject of the initial posting could be construed as a response subject to the Sunshine Law).

Similarly, a board that is responsible for assessing the performance of its chief executive officer (CEO) should conduct the review and appraisal process in a proceeding open to the public as prescribed by s. 286.011, F.S., instead of using a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chairman for compilation and

subsequent discussion with the CEO. AGO 93-90.

**b. Meetings conducted over the telephone or using electronic media technology**

**(1) Discussions conducted via telephones, computers, or other electronic means are not exempted from the Sunshine Law**

As discussed in this manual, the Sunshine Law applies to the deliberations and discussions between two or more members of a board or commission on some matter which foreseeably will come before that board or commission for action. The use of a telephone to conduct such discussions does not remove the conversation from the requirements of s. 286.011, F.S. See *State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), *per curiam affirmed*, 886 So. 2d 229 (Fla. 1st DCA 2004) (telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law).

Similarly, members of a public board may not use computers to conduct private discussions among themselves about board business. AGO 89-39. *And see* AGO 09-19 (members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action). *Cf.* Inf. Op. to Galaydick, October 19, 1995, (school board members may share laptop computer even though computer's hard drive contains information reflecting ideas of an individual member as long as computer is not being used as a means of communication between members); and AGO 01-20 (*one-way* e-mail communication from one council member to another, which does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Sunshine Law; however, such e-mail communications are public records and must be maintained by the records custodian for public inspection and copying).

**(2) Authority of boards to conduct public meetings via electronic media technology (e.g., telephone or video conferencing)**

**(a) State boards**

In AGO 98-28, the Attorney General's Office concluded that s. 120.54(5)(b)2., F.S., authorizes *state* agencies to conduct public meetings via electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain no notice requirements and procedures for providing points of access for the public. See Rule 28-109, F.A.C.

**(b) Local boards**

As to *local* boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct workshops and official meetings entirely through the use of communications media technology applies only to state agencies. AGO 98-28. Thus, since s. 1001.372(2)(b), F.S., requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id.* *And see* AGO 09-56 (where a quorum is required and

absent a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum). *But see* Ch. 06-350, Laws of Florida, authorizing the Monroe County Commission to use teleconferencing equipment to qualify for a quorum for a special meeting.

If a quorum of a local board is physically present, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board." AGO 03-41. *Accord* AGOs 94-55 (when a quorum of the board is physically present at the public meeting site in Florida, a museum board may allow an out-of-state member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting), 92-44 (ill county commissioner may participate and vote in commission meetings through use of an interactive video and telephone system, provided a legal quorum of the commission meet in a public place in the county as required by statute), and 02-82 (physically-disabled members of a city advisory committee may participate and vote by electronic means as long as a quorum of the committee members is physically present at the meeting site).

The physical presence of a quorum has not been required, however, where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at *workshop* meetings where no formal action will be taken. In AGO 06-20, the Attorney General's Office concluded that an advisory board composed of representatives from several county metropolitan planning organizations may use electronic media technology to link simultaneously held public meetings of citizens' advisory committees in each of its participating counties, so as to allow all members of the committees and the public to hear and participate at workshops. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. *Id.*

Similarly, airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. AGO 01-66. Such interactive access must include not only public access via the Internet but also at designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have Internet access. *Id.* For meetings, however, where a quorum is necessary for action to be taken, physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. *Id.* Internet access to such meetings, however, may still be offered to provide greater public access. *Id.* *Cf.* AGO 08-65, noting that a city's plan to provide additional public access to on-line workshop meetings by making computers available at a public library "should ensure that operating-type assistance is available at the library where the computers are located."

However, the use of an electronic bulletin board to discuss matters over an extended

period of days or weeks, which does not permit the public to participate online, violates the Sunshine Law by circumventing the notice and access provisions of that law. AGO 02-32. *And see* Inf. Op. to Ciocchetti, March 23, 2006 (even though the public would be able to participate online, a town commission's proposed use of an electronic bulletin board to discuss matters that may foreseeably come before the commission over an extended period of time would not comply with the spirit or letter of the Sunshine Law because the burden would be on the public to constantly monitor the site in order to participate meaningfully in the discussion). *Compare* AGO 08-65 (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided).

### **c. Delegation of authority**

"The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by under taking to delegate the conduct of public business through an alter ego." *IDS Properties, Inc. v. Town of Palm Beach*, 279 So. 2d 353, 359 (Fla. 4th DCA 1973), *certified question answered sub nom., Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). *See also News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate *de facto* authority to act on their behalf in the formulation, preparation, and promulgation of plans on which foreseeable action will be taken by those public officials, those delegated that authority stand in the shoes of such public officials insofar as the Sunshine Law is concerned). *Cf. Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (committee charged with evaluating proposals violated the Sunshine Law when the city clerk unilaterally tallied the results of the committee members' individual written evaluations and ranked them; the short-listing by the clerk "was formal action that was required to be taken at a public meeting").

Thus, the Attorney General's Office has concluded that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. *Accord* AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. *And see* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

If a board member or designee has been authorized only to gather information or function as a fact-finder, the Sunshine Law does not apply. AGO 95-06. *And see* AGO 93-78 (if public board member is authorized only to explore various contract proposals, with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law). *Cf. State, Department of Management Services v. Lewis*, 653 So. 2d 467 (Fla. 1st DCA 1995) (issuance of an order of reconsideration by a board chair does not violate the Sunshine Law where the purpose of the order is to provide notice to the parties and allow them an opportunity to provide argument on the issue).

If, however, the board member has been delegated the authority to reject certain options from further consideration by the entire board, the board member is performing a decision-making function that must be conducted in the sunshine. AGOs 95-06 and 93-78. See also AGO 90-17 (while Sunshine Law not violated by a city council member meeting with private contractor for information gathering purposes, if the board member has been authorized, formally or informally, to exercise any decision-making authority on behalf of the board, such as approving or rejecting certain contract provisions, the board member is acting on behalf of the board and the meetings are subject to s. 286.011, F.S.). And see *Broward County v. Conner*, 660 So. 2d 288, 290 (Fla. 4th DCA 1995), *review denied*, 669 So. 2d 250 (Fla. 1996) (since Sunshine Law provides that actions of a public board are not valid unless they are made at an open public meeting, a county's attorneys would not be authorized to enter into a contract on the commission's behalf "without formal action by the county commission at a meeting as required by the statute"). Compare *Lee County v. Pierpont*, 693 So. 2d 994 (Fla. 2d DCA 1997), *affirmed*, 710 So. 2d 958 (Fla. 1998) (authorization to county attorney to make settlement offers to landowners not to exceed appraised value plus 20%, rather than a specific dollar amount, did not violate the Sunshine Law).

Thus, the applicability of the Sunshine Law relates to the discussions of a single individual who has been delegated decision-making authority on behalf of a board or commission. If the individual, rather than the board, is vested by law, charter or ordinance with the authority to take action, such discussions are not subject to s. 286.011, F.S. See *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since the mayor was responsible under the city charter for disciplining city employees and since the mayor was not a board or commission and was not acting for a board, meetings between the mayor and a city employee concerning the employee's duties were not subject to s. 286.011, F.S.).

#### **d. Use of nonmembers as liaisons between board members**

The Sunshine Law is applicable to meetings between a board member and an individual who is not a member of the board when that individual is being used as a liaison between, or to conduct a *de facto* meeting of, board members. See AGO 74-47 (city manager is not a member of the city council and thus may meet with individual council members; however, the manager may not act as a liaison for board members by circulating information and thoughts of individual council members). Compare AGO 89-39 (aides to county commissioners would not be subject to the Sunshine Law unless they have been delegated decision-making functions outside of the ambit of normal staff functions, are acting as liaisons between board members, or are acting in place of the board or its members at their direction).

For example, in *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979), the court held that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the school superintendent and an individual school board member would not be subject to s. 286.011, F.S., these meetings were held in "rapid-fire succession" in order to avoid a public airing of a controversial redistricting problem. They amounted to a *de facto* meeting of the school

board in violation of s. 286.011, F.S. *And see Sentinel Communications Company v. School Board of Osceola County*, No. C192-0045 (Fla. 9th Cir. Ct. April 3, 1992) (series of private meetings between school superintendent and individual school board members to consider staff recommendations concerning administrative structure of the school system and to privately address any of the board's concerns, should have been held in the sunshine; while individual board members are not prohibited from meeting privately with staff or the superintendent for informational purposes or on an ad hoc basis, the Sunshine Law "shall be construed to prohibit the scheduling of a series of such meetings which concern a specific agenda"). *Cf.* Inf. Op. to Goren, October 28, 2009 (while individual city commissioners may seek advice or information from staff, city should be cognizant of the potential that commissioners seeking clarification by follow-up with staff with staff responses provided to all commissioners could be considered to be a *de facto* meeting of the commissioners by using staff as a conduit between commissioners).

In *Citizens for a Better Royal Palm Beach, Inc. v. Village of Royal Palm Beach*, No. CL 9114417 AA (Fla. 15th Cir. Ct. May 14, 1992), the court invalidated a contract for the sale of municipal property when it determined that after the proposal to sell the property which had been discussed and approved at a public meeting collapsed, the city manager met individually with council members and from those discussions the property was sold to another group. The circuit court found that these meetings resulted in a substantial change in the terms of sale and that the execution of the contract, therefore, violated the Sunshine Law.

Thus, a city manager should refrain from asking each commissioner to state his or her position on a specific matter which will foreseeably be considered by the commission at a public meeting in order to provide the information to the members of the commission. AGO 89-23. *See also* AGO 75-59 (director should refrain from calling each member of the board separately and asking each member to state his or her position on a matter which will foreseeably be presented for consideration to the entire board in open session); and Inf. Op. to Biasco, July 2, 1997 (administrative officers or staff who serve public boards should not poll board members on issues which will foreseeably come before the board although an administrative officer is not precluded from contacting individual board members for their views on a matter when the officer, and not the board, has been vested with the authority to take action). *Cf.* AGO 81-42 (the fact that a city council member has expressed his or her views or voting intent on an upcoming matter to a news reporter prior to the scheduled public meeting does not violate the Sunshine Law so long as the reporter is not being used by the member as an intermediary in order to circumvent the requirements of s. 286.011, F.S.).

Not all decisions taken by staff, however, need to be made or approved by a board. Thus, the district court concluded in *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), that the decision to appeal made by legal counsel to a public board after discussions between the legal staff and individual members of the board was not subject to the Sunshine Law.

## **D. WHAT TYPES OF DISCUSSIONS ARE COVERED BY THE SUNSHINE LAW?**

### **1. Informal discussions, workshops**

As discussed in s. C.1., *supra*, the Sunshine Law applies 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. As the Florida Supreme Court said, "collective inquiry and discussion stages" are embraced within the terms of the statute. *Town of Palm Beach v. Gradison*, 296 So. 2d 474, 477 (Fla. 1974). With these principles in mind, the Attorney General's Office has stated that the following gatherings are subject to the Sunshine Law: "executive work sessions" held by a board of commissioners of a housing authority to discuss policy matters, AGO 76-102; "conciliation conferences" of a human relations board, AGO 74-358; "workshop meetings" of a planning and zoning commission, AGO 74-94; "conference sessions" held by a town council before its regular meetings, AGO 74-62; discussions of preaudit reports of the Auditor General by the governing body of a special district, AGO 73-08. *And see Ruff v. School Board of Collier County*, 426 So. 2d 1015 (Fla. 2d DCA 1983) (organizational meeting of task force subject to s. 286.011, F.S.).

The Sunshine Law is, therefore, applicable to all functions of covered boards and commissions, whether formal or informal, which relate to the affairs and duties of the board or commission. "[T]he Sunshine Law does not provide that cases be treated differently based upon their level of public importance." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla. 3d DCA 1994). *And see* Inf. Op. to Nelson, May 19, 1980 (meeting with congressman and city council members to discuss "federal budgetary matters which vitally concern their communities" should be held in the sunshine because "it appears extremely likely that discussion of public business by the council members [and perhaps decision making] will take place at the meeting"); and Inf. to Jove, January 12, 2009, concluding that a public forum hosted by a city council member with city council members invited to attend and participate in the discussion would be subject to s. 286.011, F.S. *Cf.* AGOs 08-63 (orientation sessions held by local governments for special magistrates hired to hear value adjustment board petitions are not subject to s. 286.011, F.S.); and 10-15 (Sunshine Law applies to discussions of special magistrate on matters that will foreseeably come before the magistrate for action in exercising his or her delegated authority to act on behalf of the value adjustment board).

### **2. Investigative meetings or meetings to consider confidential material**

#### **a. Investigative meetings**

The Sunshine Law is applicable to investigative inquiries of public boards or commissions. The fact that a meeting concerns alleged violations of laws or regulations does not remove it from the scope of the law. AGO 74-84; and *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

A number of statutory exemptions to the Sunshine Law have been enacted to close meetings of some agencies (usually state agencies) when those agencies are making

investigatory determinations. For example, s. 112.324(2)(a), F.S. provides that any proceeding related to a complaint or preliminary investigation held by the Florida Commission on Ethics, a county or municipal Commission on Ethics and Public Trust, or a county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 is confidential until the complaint is dismissed, the alleged violator requests that the proceedings be made public, or the commission or the county or municipality that has established such a local investigatory process determines whether probable cause exists. *And see* s. 455.225(4), F.S. (meetings of probable cause panels of the Department of Business and Professional Regulation confidential until 10 days after probable cause is found to exist or until confidentiality is waived by subject of investigation); and s. 472.033(4), F.S. (meetings of probable cause panels for disciplinary proceedings of the Board of Professional Surveyors and Mappers within the Department of Agriculture and Consumer Services are exempt from s. 286.011, F.S., until 10 days after probable cause is found to exist or until confidentiality is waived by subject of investigation).

For additional information regarding exemptions from s. 286.011, F.S., that relate to investigatory proceedings, please consult Appendix D.

#### **b. Meetings to consider confidential material**

The Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, s. 286.011, F.S., should be construed as containing no exceptions. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

The Public Records Act was amended in 1991 after several district courts held that certain proceedings could be closed when considering confidential material. Section 119.07(7), F.S., provides that an exemption from s. 119.07, F.S., "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Act do not by implication allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law. See AGOs 10-04 and 91-75 (school board), 04-44 (PRIDE), 95-65 (district case review committee), 93-41 (county criminal justice commission), 91-88 (pension board) and 91-75 (school board). *And see* AGOs 05-03 (confidentiality provisions of cited federal law do not authorize child abuse death review committee to close its meetings although the committee should take steps to ensure that identifying information is not disclosed at such meetings), and 96-75 (since transcript of a closed attorney-client session is open to public inspection once the litigation is concluded, city and its attorneys should be sensitive to any discussions of confidential medical reports during such a meeting and take precautions to protect the confidentiality of such medical reports so that when the transcript is opened for inspection, the privacy of the employee will not be breached). *Cf.* AGO 96-40 (a town may not require a complainant to sign a waiver of confidentiality before accepting a whistle-blower's complaint for processing since the Legislature has provided for confidentiality of the whistle-blower's identity).



### 3. Legal matters

In the absence of a legislative exemption, discussions between a public board and its attorney are subject to s. 286.011, F.S. *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985) (s. 90.502, F.S., providing for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings; application of the Sunshine Law to such discussions does not usurp Supreme Court's constitutional authority to regulate the practice of law, nor is it at odds with Florida Bar rules providing for attorney-client confidentiality). *Cf.* s. 90.502(6), F.S., stating that a discussion or activity that is *not* a meeting for purposes of s. 286.011, F.S., shall not be construed to waive the attorney-client privilege. *And see Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), stating that all decisions taken by legal counsel to a public board need not be made or approved by the board; thus, the decision to appeal made by legal counsel after private discussions with the individual members of the board did not violate s. 286.011, F.S.

There are statutory exemptions, however, which apply to some discussions of pending litigation between a public board and its attorney.

#### a. Settlement negotiations or strategy sessions related to litigation expenditures

Section 286.011(8), F.S., provides:

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 meetings shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- (c) The entire sessions 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 sessions 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 meetings 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 meetings shall be reopened and the person chairing the meetings shall announce the termination of the session.

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

### **(1) Is s. 286.011(8) to be liberally or strictly construed?**

It has been held that the Legislature intended a strict construction of s. 286.011(8), F.S. *City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995). "The clear requirements of the statute are neither one nor difficult to satisfy." *Id.* at 1027. *Accord School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99 (Fla. 1st DCA 1996).

### **(2) Who may call an attorney-client meeting?**

While section 286.011(8), F.S., does not specify who calls the closed attorney-client meeting, it requires that the governmental entity's attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation." Thus, the exemption merely provides a governmental entity's attorney an opportunity to receive necessary direction and information from the governmental entity regarding pending litigation. AGO 04-35. Accordingly, one of the conditions that must be met prior to holding a closed attorney-client meeting is that the city attorney must indicate to the city council at a public meeting that he or she wishes the advice of the city council regarding the pending litigation to which the city is presently a party before a court or administrative agency. Inf. Op. to Vock, July 11, 2001. "If the city attorney does not advise the city council at a public meeting that he or she desires the council's advice regarding the litigation, the city council is not precluded from providing such advice to the city attorney but it must do so at a public meeting." *Id.*

The requirement that the board's attorney advise the board at a public meeting that he or she desires advice concerning litigation, is not satisfied by a previously published notice of the closed session; such an announcement must be made at a public meeting of the board. AGO 04-35. The request may be made during a special meeting provided that the special meeting at which the request is made is open to the public, reasonable notice has been given, and minutes are taken. AGO 07-31.

### **(3) Who may attend?**

Only those persons listed in the statutory exemption, *i.e.*, the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Other staff members or consultants are not allowed to be present. *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d at 101. *See Zorc v. City of Vero Beach*, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), *review denied*, 735 So. 2d 1284 (Fla. 1999) (city charter provision requiring that city clerk attend all council meetings does not authorize clerk to

attend closed attorney-client session; municipality may not authorize what the Legislature has expressly forbidden); A GO 01-10 (clerk of court not authorized to attend); and AGO 09-52 (attorneys representing superintendent not authorized to attend closed session to discuss settlement of administrative action in which school board is the named party).

Since the entity's attorney is permitted to attend the closed session, if the school board hires outside counsel to represent it in pending litigation, both the school board attorney and the litigation attorney may attend a closed session. AGO 98-06. *See Zorc v. City of Vero Beach*, 722 So. 2d at 898 (attendance of special counsel authorized).

In rejecting the argument that the exemption should be construed so as to allow staff to attend closed attorney-client sessions, the courts have noted that *individual* board members are free to meet privately with staff at any time since "staff members are not subject to the Sunshine Law." *Zorc v. City of Vero Beach*, 722 So. 2d at 899; *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d at 101. *Cf.* AGO 95-06 (s. 286.011[8], F.S., does not authorize the temporary adjournment and reconvening of meetings in order for members who are attending such a session to leave the room and consult with others outside the meeting). *And see* s. C.2.d., *supra*, regarding the Sunshine Law's application to meetings between individual board members and staff, if staff is being used as a liaison between, or to conduct a *de facto* meeting of, board members.

However, as the Attorney General's Office recognized in AGO 08-42, qualified interpreters for the deaf are treated by the Americans with Disabilities Act as auxiliary aids in the nature of hearing aids and other assistive devices and may attend litigation strategy meetings of a board or commission to interpret for a deaf board member without violating section 286.011(8), F.S.

#### **(4) Is substantial compliance with the conditions established in the statute adequate?**

In *City of Dunnellon v. Aran*, *supra*, the court said that a city council's failure to announce the names of the lawyers participating in a closed attorney-client session violated the Sunshine Law. The court rejected the city's claim that when the mayor announced that attorneys hired by the city would attend the session (but did not give the names of the individuals), his "substantial compliance" was sufficient to satisfy the statute. *Cf. Zorc v. City of Vero Beach*, 722 So. 2d at 901, noting that deviation from the agenda at an attorney-client session is not authorized; while such deviation is permissible if a *public* meeting has been properly noticed, "there is no case law affording the same latitude to deviations in closed door meetings."

#### **(5) What kinds of matters may be discussed at the attorney-client session?**

Section 286.011(8)(b), F.S., states that the subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures. If a board goes beyond the "strict parameters of settlement negotiations and strategy sessions related to litigation expenditures" and takes "decisive action," a

violation of the Sunshine Law results. *Zorc v. City of Vero Beach*, 722 So. 2d at 900. *And see* AGO 99-37 (closed-meeting exemption may be used only when the attorney for a governmental entity seeks advice on settlement negotiations or strategy relating to litigation expenditures; such meetings should not be used to finalize action or discuss matters outside these two narrowly prescribed areas). *Accord* AGO 04-35.

Section 286.011(8), F.S., " simply provides a governmental entity's attorney an opportunity to receive necessary direction and information from the government entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting." *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 100 (Fla. 1st DCA 1996), quoting Staff of Fla. H.R. Comm. on Gov't Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement 2 (Fla. State Archives), at 3.

Thus, "[t]he settlement of a case is exactly that type of final decision contemplated by the drafters of section 286.011(8) which must be voted upon in the sunshine." *Zorc v. City of Vero Beach*, 722 So. 2d at 901. *Accord* AGO 08-17 (any action to approve a settlement or litigation expenditures must be voted on in a public meeting). *See also Freeman v. Times Publishing Company*, 696 So. 2d 427 (Fla. 2d DCA 1997) (discussion of methods or options to achieve continuing compliance with a long-standing federal desegregation mandate [such as whether to modify the boundaries of a school zone to achieve racial balance] must be held in the sunshine). *Compare Bruckner v. City of Dania Beach*, 823 So. 2d 167, 172 (Fla. 4th DCA 2002) (closed city commission meeting to discuss various options to settle a lawsuit involving a challenge to a city resolution, including modification of the resolution, authorized because the commission "neither voted, took official action to amend the resolution, nor did it formally decide to settle the litigation"); and *Brown v. City of Lauderhill*, 654 So. 2d 302, 303 (Fla. 4th DCA 1995) (closed-door session between city attorney and board to discuss claims for attorney's fees, authorized).

#### **(6) When is an agency a party to "pending litigation" for purposes of the exemption?**

Section 286.011(8) permits an entity to use the exemption if the entity "is presently a party before a court or administrative agency . . . ." A city council and its attorney may, therefore, hold a closed-door meeting pursuant to this statute to discuss settlement negotiations or strategy related to litigation expenditures for pending litigation involving a workers' compensation claim where a petition for benefits as prescribed in s. 440.192, F.S., has been filed. AGO 96-75.

In *Brown v. City of Lauderhill*, 654 So. 2d 302 (Fla. 4th DCA 1995), the court said it could "discern no rational basis for concluding that a city is not a 'party' to pending litigation in which it is the real party in interest." *And see Zorc v. City of Vero Beach*, 722 So. 2d at 900 (city was presently a party to ongoing litigation by virtue of its already pending claims in bankruptcy proceedings); and AGOs 09-15 (exemption applicable when city is real party in interest of a pending lawsuit despite not being a named party at the time of the meeting), and 08-17 (health care district may hold a closed attorney-

client meeting to discuss settlement negotiations and strategies related to litigation expenditures for pending litigation in which its wholly-owned subsidiary holding company is the named party).

Although the *Brown* decision established that the exemption could be used by a city that was a real party in interest on a claim involved in *pending* litigation, that decision does not mean that an agency may meet in executive session with its attorney where there is only the *threat* of litigation. See AGOs 04-35 and 98-21 (s. 286.011[8] exemption "does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable"). *And see* AGOs 06-03 (exemption not applicable to pre-litigation mediation proceedings), 09-14 (exemption not applicable to discussion of terms of mediation in conflict resolution proceedings under the "Florida Governmental Conflict Resolution Act," s.s. 164.101-164.1061, F.S.), and 09-25 (town council which received pre-suit notice letter under the Bert J. Harris Act, s. 70.001, F.S., is not a party to pending litigation for purposes of s. 286.011[8], F.S.).

### **(7) When is litigation "concluded" for purposes of s. 286.011(8)(e)?**

An action or lawsuit is "pending" from its inception until the rendition of a final judgment. AGO 06-03. Litigation that is ongoing but temporarily suspended pursuant to a stipulation for settlement has not been concluded for purposes of s. 286.011(8), F.S., and a transcript of meetings held between the city and its attorney to discuss such litigation may be kept confidential until conclusion of the litigation. AGO 94-64. *And see* AGO 94-33 (a public agency may maintain the confidentiality of a record of a strategy or settlement meeting between a public agency and its attorney until the suit is dismissed with prejudice or the applicable statute of limitations has run). *Cf.* AGO 96-75 (disclosure of medical records to a city council during a closed-door meeting under s. 286.011[8], F.S., does not affect requirement that the transcript of such a meeting be made a part of the public record at the conclusion of the litigation).

### **b. Risk management exemption**

Section 768.28(16)(c), F.S., states that portions of meetings and proceedings relating solely to the evaluation of claims or to offers of compromise of claims filed with a risk management program of the state, its agencies and subdivisions, are exempt from s. 286.011, F.S. The minutes of such meetings and proceedings are also exempt from public disclosure until the termination of the litigation and settlement of all claims arising out of the same incident. Section 768.28(16)(d), F.S.

This exemption is limited and applies only to tort claims for which the agency may be liable under s. 768.28, F.S. AGO 04-35. The exemption is not applicable to meetings held prior to the filing of a tort claim with the risk management program. AGO 92-82. Moreover, a meeting of a city's risk management committee is exempt from the Sunshine Law only when the meeting relates solely to the evaluation of a tort claim filed with the risk management program or relates solely to an offer of compromise of a tort claim filed with the risk management program. AGO 04-35.

Unlike s. 286.011(8), F.S., s. 768.28(16), F.S., does not specify the personnel who are authorized to attend the meeting. See AGO 00-20, advising that personnel of the

school district who are involved in the risk management aspect of the tort claim being litigated or settled may attend such meetings without jeopardizing the confidentiality provisions of the statute.

#### **c. Notice of settlement of tort claim**

A governmental entity, except a municipality or county, settling a claim in tort which requires the expenditure of more than \$5,000 in public funds, is required to provide notice pursuant to Ch. 50, F.S., of the settlement in the county in which the claim arose within 60 days of entering into the settlement. No notice is required if the settlement has been approved by a court of competent jurisdiction. Section 69.081(9), F.S.

### **4. Personnel matters**

Meetings of a public board or commission at which personnel matters are discussed are not exempt from the provisions of s. 286.011, F.S., in the absence of a specific statutory exemption. *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). *And see* AGO 10-14 (three member team established by charter school board of directors to review personnel decisions of the school subject to Sunshine Law).

#### **a. Collective bargaining discussions**

##### **(1) Strategy sessions**

A limited exemption from s. 286.011, F.S., exists for discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body of the public employer relative to collective bargaining. Section 447.605(1), F.S. A similar exemption is contained in s. 110.201(4), F.S., for discussions between the Department of Management Services and the Governor, between the department and the Administration Commission or agency heads, or between any of their respective representatives, relative to collective bargaining.

A duly-appointed labor negotiating committee of a city that does not have a city manager or city administrator qualifies as the "chief executive officer" for purposes of s. 447.605(1), F.S., and may use the exemption when meeting with the city council to discuss collective bargaining. AGO 8-5-99. *And see* AGO 9-9-27, concluding that a committee formed by the city manager to represent the city in labor negotiations may participate in closed executive sessions conducted pursuant to s. 447.605(1), F.S. The exemption also extends to meetings of the negotiating committee itself which are held to discuss labor negotiations strategies, including when the committee adjourns during negotiations to hold a caucus among its members to determine the strategy to be employed in ongoing negotiations. *Id.*

If a school superintendent's responsibility to conduct collective bargaining on behalf of the school board has been completely delegated to a separate labor negotiating committee and the superintendent does not participate in the collective bargaining negotiations, the exemption afforded by s. 447.605(1), F.S., applies to discussions

between the committee and the school board only and does not encompass discussions among the committee, school board and superintendent. AGO 98-06.

The exemption afforded by s. 447.605(1), F.S., applies only in the context of actual and impending collective bargaining negotiations. AGO 85-99. It does not allow private discussions of a proposed "mini-PERC ordinance" or the stance a public body intends to adopt in regard to unionization and/or collective bargaining. AGO 75-48. Moreover, a public body may not conduct an entire meeting outside the Sunshine Law merely by discussing one topic during the course of that meeting which may be statutorily exempt from s. 286.011, F.S. AGO 85-99.

Section 447.605(1), F.S., does not directly address the dissemination of information that may be obtained at the closed meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure. AGO 03-09.

## **(2) Negotiations**

The collective bargaining *negotiations* between the chief executive officer and a bargaining agent are not exempt and pursuant to s. 447.605(2), F.S., must be conducted in the sunshine. Once the collective bargaining process begins, when one side or its representative, whether before or after the declaration of an impasse, meets with the other side or its representative to discuss anything relevant to the terms and conditions of the employer-employee relationship, the meeting is subject to the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d 408, 412 (Fla. 2d DCA 1987). *Accord* AGO 99-27. As with other meetings subject to s. 286.011, F.S., minutes of the negotiation meeting must be kept. Inf. Op. to Fulwider, June 14, 1993.

The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d at 412; and AGO 76-102. *Cf. Palm Beach County Classroom Teachers' Association v. School Board of Palm Beach County*, 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S.).

### **b. Complaint review boards, disciplinary proceedings and grievances**

A complaint review board of a city police department is subject to the Government in the Sunshine Law. *Barfield v. City of West Palm Beach*, No. CL94-2141-AC (Fla. 15th Cir. Ct. May 6, 1994). *Accord* AGOs 78-105 (police complaint review boards convened pursuant to s. 112.532[2], F.S., are subject to the Sunshine Law), and 80-27 (sheriff civil service board created by special act). *And see* AGO 93-79 (discussions between two members of a three-member complaint review board regarding their selection of the third member of the board must be conducted in accordance with s. 286.011, F.S.). *Compare Molina v. City of Miami*, 837 So. 2d 463 (Fla. 3d DCA 2002) (Sunshine Law does not apply to a Discharge of Firearms Review Committee, composed of three

deputy chiefs of police, because the committee is nothing more than a meeting of staff members who serve in a fact-finding advisory capacity to the chief ).

Similarly, meetings of a board or commission to conduct disciplinary proceedings are subject to the Sunshine Law in the absence of a statutory exemption. See, e.g., AGOs 92-65 (employee termination hearing), 07-54 (while post-termination hearing before city manager are not subject to the Sunshine Law, hearings before a three member panel appointed by the city manager should be open), and 10-14 (team created by charter school board of directors to review employment decisions is subject to the Sunshine Law). *And see News-Press Publishing Company v. Wisner*, 345 So. 2d 646, 647-648 (Fla. 1977), in which the Court disapproved of a county's use of "pseudonyms or cloaked references" during a meeting held to reprimand an unnamed department head. *Cf. Inf. Op. to Gerstein*, July 16, 1976, noting that a discussion between two city councilmen and the city manager regarding the city manager's resignation was subject to the Sunshine Law.

A meeting of a municipal housing authority commission to consider an employee's appeal of his or her dismissal by the executive director must be open to the public. AGO 92-65. See also AGO 77-132 (personnel council composed of citizens appointed by members of county commission to hear appeals from county employees who have been disciplined not authorized to deliberate in secret). *And see Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004) (deliberations of pre-termination panel composed of the department head, personnel director and equal opportunity director should have been held in the Sunshine). *Compare Jordan v. Jenne*, 938 So. 2d 526 (Fla. 4th DCA 2006) (Sunshine Law not applicable to a professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general as to whether the charges should be sustained, dismissed, or whether the case should be deferred for more information); *McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009).

Where, however, a mayor as chief executive officer, rather than the city council, is responsible under the city charter for disciplining city employees, meetings between the mayor and a city employee concerning discipline of the employee are not subject to the Sunshine Law. *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989).

The Sunshine Law also applies to board discussions concerning grievances. AGO 76-102. *And see Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), in which the court affirmed the lower tribunal's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance arbitration hearing. A collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S. *Id.* at 1376. See also *Dascott v. Palm Beach County*, *supra* (grievance committee hearings subject to Sunshine Law); and AGO 84-70 (Sunshine Law applies to staff grievance committee created to make nonbinding recommendations to a county administrator regarding disposition of employee grievances).



### **c. Evaluations**

Meetings of a board to evaluate employee performance are not exempt from the Sunshine Law. See AGO 89-37 (Sunshine Law applies to meetings of a board of county commissioners when conducting job evaluations of county employees).

A board that is responsible for assessing the performance of its chief executive officer (CEO) should conduct the review and appraisal process in a proceeding open to the public as prescribed by s. 286.011, F.S., instead of using a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chairman for compilation and subsequent discussion with the CEO. AGO 93-90. However, meetings of individual school board members with the superintendent to discuss the individual board members' evaluations do not violate the Sunshine Law when such evaluations do not become the board's evaluation until they are compiled and discussed at a public meeting by the school board for adoption by the board. AGO 97-23.

### **d. Interviews**

The Sunshine Law applies to meetings of a board of county commissioners when interviewing applicants for county positions appointed by the board, when conducting job evaluations of county employees answering to and serving at the pleasure of the board, and when conducting employment termination interviews of county employees who serve at the pleasure of the board. AGO 89-37. *And see* AGO 75-37 (state commission must conduct interviews relating to hiring of its lawyer in public); and AGO 71-389 (district school board conducting employment interviews for district school superintendent applicants would violate the Sunshine Law if such interviews were held in secret).

### **e. Selection and screening committees**

The Sunshine Law applies to advisory committees created by an agency to assist in the selection process. In *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), a committee created to screen applications and make recommendations for the position of a law school dean was held to be subject to s. 286.011, F.S. By screening applicants and deciding which applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university. *And see* AGOs 80-20 (selection committee appointed to screen and rank applicants for submission to the city council subject to the Sunshine Law even though the city council was not bound by the committee's rankings), and 80-51 (Sunshine Law applicable to city selection committee screening proposals from consultants and audit firms). *Cf. Dore v. Sliger*, No. 90-1850 (Fla. 2d Cir. Ct. July 11, 1990) (faculty of university law school prohibited from conducting secret ballots on personnel hiring matters); and AGO 10-14 (team to review charter school employment decisions subject to Sunshine Law).

However, if the sole function of the screening committee is simply to gather information for the decision-maker, rather than to accept or reject applicants, the committee's activities are outside the Sunshine Law. See *Cape Publications, Inc. v. City*

of *Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985), holding that the Sunshine Law was not violated when the city manager, who was responsible for selecting the new police chief, asked several people to sit in on the interviews as the only function of this group was to assist the city manager in acquiring information on the applicants he had chosen by asking questions during the interviews and then discussing the qualifications of each candidate with the city manager after the interview. *And see Knox v. District School Board of Brevard*, 821 So. 2d 311, 314 (Fla. 5th DCA 2002), holding that an interview team composed of staff was not subject to s. 286.011, F.S., even though the team made recommendations since "all the applications went to the superintendent and he decided which applicants to interview and nominate to the school board."

For more information on this subject, please refer to the discussion on advisory bodies found in s. B.2., *supra*.

## **5. Purchasing or bid evaluation committees**

A committee appointed by a college's purchasing director to consider proposals submitted by contractors was held to be subject to the Sunshine Law because its function was to "weed through the various proposals, to determine which were acceptable and to rank them accordingly." *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997). *Accord* Inf. Op. to Lewis, March 15, 1999 (panels established by state agency to create requests for proposals and evaluate vendor responses are subject to the Sunshine Law). *And see Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"). *Cf.* s. 286.0113(2), F.S., providing an exemption from the Sunshine Law for meetings at which a negotiation with a vendor is conducted pursuant to s. 287.057(1), F.S.

In *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), the court ruled that a board's selection and negotiation committee violated the Sunshine Law when competing bidders were requested to excuse themselves from the committee meeting during presentations by competitors. The court found that the committee's actions "amounted to a *de facto* exclusion of the competitors, especially since the 'request' was made by an official directly involved with the procurement process." *Cf. Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002) (school board violated the Sunshine Law when it refused to permit videotaping of a public meeting held to evaluate general contractor construction proposals).

## **6. Quasi-judicial proceedings**

The Florida Supreme Court has stated that there is no exception to the Sunshine Law which would allow closed-door hearings or deliberations when a board or commission is acting in a "quasi-judicial" capacity. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973). *See also Occidental Chemical*

*Company v. Mayo*, 351 So. 2d 336, 340 n.7 (Fla. 1977), *disapproved in part on other grounds*, *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992) (characterization of the Public Service Commission's decision-making process as "quasi-judicial" did not exempt it from s. 286.011, F.S.); and *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), affirming the lower court's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance hearing.

The Attorney General's Office has concluded that deliberations of the following boards or commissions are subject to s. 286.011, F.S., notwithstanding the fact that the boards or commissions are acting in a "quasi-judicial" capacity: municipal housing authority, A GO 92-65; municipal board of adjustment, A GO 83-43; personnel council created to hear appeals of disciplined employees, A GO 77-132; assessment administration review commission, A GO 75-37; civil service board, AGOs 73-370 and 71-29; fair housing and employment appeals board, Inf. Op. to Beare, April 20, 1977.

## **7. Real property negotiations**

In the absence of a statutory exemption, the negotiations by a public board or commission for the sale or purchase of property must be conducted in the sunshine. See *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971) (city commission not authorized to hold closed sessions to discuss condemnation issues). In addition, if the authority of the public board or commission to acquire or lease property has been delegated to a single member, that member is subject to s. 286.011, F.S., and is prohibited from negotiating the acquisition or lease of the property in secret. A GO 74-294. Cf. A GO 95-06 (statutory exemption from Ch. 119, F.S., for certain records relating to the proposed purchase of real property does not authorize a city or its designee to conduct negotiations for purchase of property outside the Sunshine Law).

Advisory committees charged with land acquisition responsibilities are also subject to the Sunshine Law. See AGOs 87-42 (ad hoc committee appointed by mayor to meet with the Chamber of Commerce to discuss a proposed transfer of city property), and 86-51 (land selection committee appointed by water management district to evaluate and recommend projects for acquisition).

## **E. DOES THE SUNSHINE LAW APPLY TO:**

1. members-elect or candidates;
2. meetings between members of different boards;
3. meetings between a mayor and a member of the city council;
4. meetings between a board member and his or her alternate;
5. meetings between an *ex officio*, non-voting board member and a voting member of the board;
6. community forums sponsored by private organizations;

7. board members attending meetings of another public board;
8. social events; or
9. a husband and wife serving on the same board?

### **1. Members-elect or candidates**

Members-elect of boards or commissions are subject to the Sunshine Law. See *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973) (individual, upon election to public office, loses his or her status as a private individual and acquires a position more akin to that of a public trustee and therefore is subject to s. 286.011, F.S.). *And see* AGO 74-40 (members-elect may be liable for "sunshine" violations).

However, the Sunshine Law does not apply to a briefing session between a retiring mayor and the mayor-elect who is not an incumbent council member since the mayor and the mayor-elect do not , and will not once the mayor-elect takes office, serve together on the city council. AGO 93-04. Nor does the Sunshine Law apply to candidates for office, unless the candidate is an incumbent seeking reelection. AGO 92-05. *And see* AGO 98-60 (although a candidate running for city commission may be unopposed, he or she is not considered to be elected until the election has been held and therefore is not a member-elect for purposes of the Sunshine Law until that time).

### **2. Meetings between members of different boards**

The Sunshine Law does not apply to a meeting between individuals who are members of *different* boards *unless* one or more of the individuals has been delegated the authority to act on behalf of his or her board. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984). *Accord* AGO 84-16 (meeting between the chair of a private industry council created pursuant to federal law and the chair of a five-county employment and training consortium created pursuant to state law is not subject to Sunshine Law, unless there is a delegation of decision-making authority to the chair of the consortium); and Inf. Op. to McClash, April 29, 1992 (Sunshine Law generally not applicable to county commissioner meeting with individual member of metropolitan planning organization). *And see News-Press Publishing Company, Inc. v. Lee County, Florida*, 570 So. 2d 1325 (Fla. 2d DCA 1990) (Sunshine Law not applicable to mediation proceeding attended by individual members of city and county boards who were in litigation because only one member of each board was present at the proceedings and no final settlement negotiations could be made during the mediation conference).

An individual city council member may, therefore, meet privately with an individual member of the municipal planning and zoning board to discuss a recommendation made by that board since two or more members of either board are not present, provided that no delegation of decision-making authority has been made and neither member is acting as a liaison. AGO 87-34. *Accord* AGOs 99-55 (school board member meeting with member of advisory committee established by school board), and 97-52 (discussions between individual member of community college board of trustees and school board member regarding acquisition of property by school board).

### **3. Meetings between a mayor and a member of the city council**

If the mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council are subject to the Sunshine Law. AGOs 83-70 and 75-210. *Cf.* AGO 92-26 (discussions between the mayor and city administrator, who are members of a personnel committee responsible for making recommendations to the city council, on matters which foreseeably will come before the committee for action are governed by s. 286.011, F.S.).

Where, however, the mayor is *not* a member of the city council and does not possess any power to vote even in the case of a tie vote but possesses only the power to veto legislation, then the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided the mayor is not acting as a liaison between members and neither individual has been delegated the authority to act on behalf of the council. AGOs 90-26 and 85-36. *And see* Inf. Op. to Cassady, April 7, 2005 (mayor who is not a member of the city council and cannot vote even in the event of a tie, may meet with an individual council member to discuss the mayor's recommendations to the council concerning prospective appointees).

If a decision falls within the administrative functions of the mayor and would not come before the city council for consideration, discussions between an individual member of the city council and the mayor are not subject to the Sunshine Law since such discussions do not relate to a matter which will foreseeably come before the city council for action. AGOs 83-70 and 75-210. *See* s. B.10., *supra*. *Cf. City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since mayor was responsible under the city charter for disciplining city employees, mayor in carrying out this function was not subject to s. 286.011, F.S.).

### **4. Meetings between a board member and his or her alternate**

Since the alternate is authorized to act only in the absence of a board or commission member, there is no meeting of two individuals who exercise independent decision-making authority at the meeting. There is, in effect, only one decision-making official present. Therefore, a meeting between a board member and his or her alternate is not subject to the Sunshine Law. AGO 88-45.

### **5. Meetings between an *ex officio*, non-voting board member and a voting member of the board**

Meetings between a voting member of a board and a non-voting member who serves as a member of the board in an *ex officio*, non-voting capacity, are subject to the Sunshine Law. AGO 05-18.

### **6. Community forums sponsored by private organizations**

A "Candidates' Night" sponsored by a private organization at which candidates for public office, including several incumbent city council members, will speak about their political philosophies, trends, and issues facing the city, is not subject to the Sunshine

Law unless the council members discuss issues coming before the council among themselves. AGO 92-05. *Compare* Inf. Op. to Jove, January 12, 2009, concluding that a public forum hosted by a city council member with city council members invited to attend and participate in the discussion would be subject to s. 286.011, F.S.

Similarly, in AGO 94-62, the Attorney General's Office concluded that the Sunshine Law does not apply to a political forum sponsored by a private civic club during which county commissioners express their position on matters that may foreseeably come before the commission, so long as the commissioners avoid discussions among themselves on these issues. *And* see A GO 08 -18 ( participation by two city council members in a citizens police academy does not violate the Sunshine Law ; " [t]he educational course is not changed into a meeting of a board or commission . . . by the attendance and participation of members of the city council in the course work of the academy").

However, caution should be exercised to avoid situations in which private political or community forums may be used to circumvent the statute's requirements. *Id.* See *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 ( Fla. 1974) (Sunshine Law must be construed "so as to frustrate all evasive devices"). For example, in *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), the court rejected the argument that the Sunshine Law permitted city commissioners to attend a private breakfast meeting at which the sheriff spoke and the commissioners individually questioned the sheriff but did not direct comments or questions to each other. The court denied the commissioners' motion for summary judgment and ruled that the discussion should have been held in the Sunshine because the sheriff was a "common facilitator" who received comments from each commissioner in front of the other commissioners.

## **7. Board members attending meetings of another public board**

The Attorney General's Office has stated that the Sunshine Law does not prohibit city commissioners from attending other city board meetings and commenting on agenda items that may subsequently come before the commission for final action, provided the city commissioners attending such meetings do not discuss those issues among themselves. AGO 00-68. *And* see AGOs 99-55 ( school board member may attend a public meeting of an advisory committee without prior notice of his or her attendance; if, however, it is known that two or more members of the school board are planning to be in attendance and participate, it would be advisable to note their attendance in the notice of the advisory committee meeting), and 98-79 ( city commissioner may attend a community development board meeting held to consider a proposed city ordinance and express his or her views on the proposed ordinance even though other city commissioners may be in attendance; however, the city commissioners in attendance may not engage in a discussion or debate among themselves). See *also* AGOs 05-59, 91-95 and 77-138.

When board members also serve on a second public board, the Attorney General's Office has stated that the board members may participate in the meetings of the second board held in accordance with s. 286.011, F.S., and express their opinions relating to the second board's business without violating the Sunshine Law. A GO 07 -13 ( two

county commissioners serving as board members for a regional planning council). *And see* AGO 98-14, stating that members of a metropolitan planning organization (MPO) who also serve as city council members are not required to separately notice an MPO meeting when they plan to discuss MPO matters at an advertised city council meeting as long as the agenda of the city council meeting mentioned that MPO business would be discussed.

## **8. Social events**

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings. AGO 92-79. Therefore, a luncheon meeting held by a private organization for members of a public board or commission at which there is no discussion among such officials on matters relating to public business would not be subject to the Sunshine Law merely because of the presence of two or more members of a covered board or commission. AGO 72-158. *Accord* Inf. Op. to Batchelor, May 27, 1982 (Sunshine Law inapplicable when the gathering of two or more members of a board or commission is entirely for social purposes and no public business is discussed).

## **9. A husband and wife serving on the same board**

There is no *per se* violation of the Sunshine Law for a husband and wife to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of s. 286.011, F.S. AGO 89-06.

## **F. WHAT ARE THE NOTICE AND PROCEDURAL REQUIREMENTS OF THE SUNSHINE LAW?**

### **1. What kind of notice of the meeting must be given?**

#### **a. Reasonable notice required**

A vital element of the Sunshine Law is the requirement that boards subject to the law provide "reasonable notice" of all meetings. *See* s. 286.011(1), F.S. Even before the statutory amendment in 1995 expressly requiring notice, the courts had stated that in order for a public meeting to be in essence "public," reasonable notice of the meeting must be given. *See Hough v. Stembridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973); *Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985).

Reasonable public notice is required for all meetings subject to the Sunshine Law and is required even though a quorum is not present. AGOs 90-56 and 71-346. *And see Baynard v. City of Chiefland, Florida*, No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003) (reasonable notice required even if subject of meeting is "relatively unimportant"). Notice is required even though meetings of the board are "of general knowledge" and are not conducted in a closed door manner. *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309, 310 (Fla. 1st DCA 1991). "Governmental bodies who hold unnoticed meetings do so at their peril." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

The type of notice that must be given is variable, however, depending on the facts of the situation and the board involved. In some instances, posting of the notice in an area set aside for that purpose may be sufficient; in others, publication in a local newspaper may be necessary. In each case, an agency must give notice at such time and in such a manner as will enable the media and the general public to attend the meeting. AGOs 04-44, 80-78 and 73-170. *And see Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991) (purpose of the notice requirement is to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wish). *Cf. Lyon v. Lake County*, 765 So. 2d 785, 790 (Fla. 5th DCA 2000) (where county attorney provided citizen with "personal due notice" of a committee meeting and its function, it would be "unjust to reward" the citizen by concluding that a meeting lacked adequate notice because the newspaper advertisement failed to correctly name the committee). *See also Suncam, Inc. v. Worrall*, No. C197-3385 (Fla. 9th Cir. Ct. May 9, 1997) (Sunshine Law requires notice to the general public; agency not required to provide "individual notice" to company that wished to be informed when certain meetings were going to occur).

While the Attorney General's Office cannot specify the type of notice which must be given in all cases, it has suggested the following notice guidelines:

1. The notice should contain the time and place of the meeting and, if available, an agenda (or if no agenda is available, subject matter summations might be used);
2. the notice should be prominently displayed in the area in the agency's offices set aside for that purpose, e.g., for cities, in city hall;
3. emergency sessions should be afforded the most appropriate and effective notice under the circumstances and special meetings should have at least 24 hours reasonable notice to the public; and
4. the use of press releases and/or phone calls to the wire services and other media is highly effective. On matters of critical public concern such as rezoning, budgeting, taxation, appointment of public officers, etc., advertising in the local newspapers of general circulation would be appropriate.

*See, e.g.,* AGOs 00-08, 94-62 and 90-56. The notice procedures set forth above should be considered as suggestions which will vary depending upon the circumstances of each particular situation. *See* AGO 73-170 ("If the purpose for notice is kept in mind, together with the character of the event about which notice is to be given and the nature of the rights to be affected, the essential requirements for notice in that situation will suggest themselves.").

Thus, in *Rhea v. City of Gainesville*, 574 So. 2d 221 (Fla. 1st DCA 1991), the court held that a complaint alleging that members of the local news media were contacted about a special meeting of the city commission one and one-half hours before the



meeting stated a sufficient cause of action that the Sunshine Law had been violated. Compare *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (three days' notice of special meeting deemed adequate); and *News and Sun-Sentinel Company v. Cox*, 702 F. Supp. 891 (S.D. Fla. 1988) (no Sunshine Law violation occurred when on March 31, a "general notice" of a city commission meeting scheduled for April 5 was posted on the bulletin board outside city hall). And see *Yarbrough v. Young*, *supra*, at 517n.1 (Sunshine Law does not require city council to give notice "by paid advertisements" of its intent to take action regarding utilities system improvements although the Legislature "has required such notice for certain subjects," see, e.g., 166.041[3][c], F.S.).

The determination as to who will actually prepare the notice or agenda is essentially "an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by . . . charters and ordinances." *Hough*, 278 So. 2d at 291.

#### **b. Notice requirements when meeting adjourned to a later date**

If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed. AGO 90-56. *But see State v. Adams*, No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992), holding that s. 286.011, F.S., was not violated by a brief discussion as to whether commission members could make an inspection trip when the discussion took place immediately after the adjournment of a duly noticed commission meeting, the room remained open during the discussion, no member of the public relied to their detriment on the adjournment by leaving the proceedings, and there was no allegation that the alleged adjournment was utilized as a tool to avoid the public scrutiny of governmental meetings. And see *Greenburg v. Metropolitan Dade County Board of County Commissioners*, 618 So. 2d 760 (Fla. 3d DCA 1993) (no impropriety in county commission continuing its meeting until the early morning hours).

#### **c. Notice requirements when board acting as quasi-judicial body or taking action affecting individual rights**

Section 286.0105, F.S., requires:

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.

Where a public board or commission acts as a quasi-judicial body or takes official action on matters that affect individual rights of citizens, in contrast with the rights of the public at large, the board or commission is subject to the requirements of s. 286.0105, F.S. AGO 81-06.

#### **d. Effect of notice requirements imposed by other statutes, codes or ordinances**

While the Sunshine Law requires only that *reasonable* public notice be given, a public agency may be subject to additional notice requirements imposed by other statutes, charters or codes. See, e.g., s. 166.041 (notice requirements for adoption of municipal ordinances); and s. 189.417(1), F.S. (notice requirements for meetings of the governing bodies of special districts). In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Mattimore, February 6, 1996. Cf. *Yarbrough v. Young*, 462 So. 2d 515, 517, n.1 (Fla. 1st DCA 1985) (Sunshine Law does not require city council to give notice "by paid advertisements" of its intent to take action regarding utilities system improvements, although the Legislature "has required such notice for certain subjects," e.g., 166.041[3][c], F.S.).

Thus, a board or commission subject to Ch. 120, F.S., the Administrative Procedure Act, must comply with the notice requirements of that act. See, e.g., s. 120.525, F.S., which provides for publication in the Florida Administrative Weekly and on the agency's website not less than 7 days before the event. Those requirements, however, are imposed by Ch. 120, F.S., not s. 286.011, F.S., although the notice of a board or commission published in the Florida Administrative Weekly pursuant to Ch. 120, F.S., also satisfies the notice requirements of s. 286.011, F.S. *Florida Parole and Probation Commission v. Baranko*, 407 So. 2d 1086 (Fla. 1st DCA 1982).

#### **2. Does the Sunshine Law require that an agenda be made available prior to board meetings or restrict the board from taking action on matters not on the agenda?**

The Sunshine Law does not *mandate* that an agency provide notice of each item to be discussed via a published agenda although the Attorney General's Office has recommended the publication of an agenda, if available. The courts have rejected such a requirement because it could effectively preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body. See *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973); and *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (posted agenda unnecessary and public body not required to postpone meeting due to inaccurate press report which was not part of the public body's official notice efforts).

Thus, the Sunshine Law does not require boards to consider only those matters on a published agenda. "[W]hether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature." *Law and Information Services, Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996). And see *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-798 (Fla. April 20, 2010) (Sunshine Law does not prohibit use of consent agenda procedure to approve minutes).

Even though the Sunshine Law does not prohibit a board from adding topics to the agenda of a regularly noticed meeting, the Attorney General's Office has advised boards to postpone formal action on any added items that are controversial. See AGO 03-53, stating that "[i]n the spirit of the Sunshine Law, the city commission should be

sensitive to the community's concerns that it be allowed advance notice and, therefore, meaningful participation on controversial issues coming before the commission."

While the Sunshine Law requires notice of *meetings*, not of the individual *items* which may be considered at that meeting, other statutes, codes or ordinances may impose such a requirement and agencies subject to those provisions must follow them. See Inf. Op. to Mattimore, February 6, 1996. For example, s. 120.525(2), F.S., requires that agencies subject to the Administrative Procedure Act must prepare an agenda in time to ensure that a copy may be received at least seven days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. After the agenda has been made available, changes may be made only for good cause. *Id.* Therefore, agencies subject to the Administrative Procedure Act must follow the requirements in that statute

### **3. Does the Sunshine Law limit where meetings of a public board or commission may be held?**

#### **a. Inspection trips**

The Sunshine Law does not prohibit *advisory* boards from conducting inspection trips provided that the board members do not discuss matters which may come before the board for official action. See *Bigelow v. Howze*, 291 So. 2d 645 (Fla. 2d DCA 1974); and AGO 02-24 (two or more members of an advisory group created to make recommendations to the city council or planning commission on proposed development may conduct vegetation surveys without subjecting themselves to the Sunshine Law, provided that they do not discuss among themselves any recommendations the committee may make).

This exception to the Sunshine Law, however, does not apply to a board with "ultimate decision-making authority." See *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008), holding that a district school board, as the ultimate decision making body, violated the Sunshine Law when the board, together with school officials and members of the media, took a bus tour of neighborhoods affected by the board's proposed rezoning even though board members were separated from each other on the bus, did not express any opinions or their preference for any of the rezoning plans, and did not vote during the trip. Compare AGO 02-24 (two or more members of an advisory group created by a city code to make recommendations to the city council or planning commission on proposed development may conduct vegetation surveys without subjecting themselves to the requirements of the Sunshine Law, provided that they do not discuss among themselves any recommendations or comments the committee may make).

#### **b. Luncheon meetings**

Public access to meetings of public boards or commissions is the key element of the Sunshine Law, and public agencies are advised to avoid holding meetings in places not easily accessible to the public. The Attorney General's Office has suggested that public boards or commissions avoid the use of luncheon meetings to conduct board or commission business. These meetings may have a "chilling" effect upon the public's

willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Inf. Op. to Campbell, February 8, 1999; and Inf. Op. to Nelson, May 19, 1980. In addition, discussions at such meetings by members of the board or commission which are audible only to those seated at the table may violate the "openness" requirement of the law. AGO 71-159. *Cf. City of Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971), in which the Florida Supreme Court observed: "A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public."

### **c. Meetings at facilities that discriminate or unreasonably restrict access prohibited**

Section 286.011(6), F.S., prohibits boards or commissions subject to the Sunshine Law from holding their meetings at any facility 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. *And see* s. 286.26, F.S., relating to accessibility of public meetings to the physically handicapped.

Public boards or commissions, therefore, are advised to avoid holding meetings at places where the public and the press are effectively excluded. AGO 71-295. Thus, a police pension board should not hold its meetings in a facility where the public has limited access and where there may be a "chilling" effect on the public's willingness to attend by requiring the public to provide identification, to leave such identification while attending the meeting and to request permission before entering the room where the meeting is held. AGO 96-55. *And see* Inf. Op. to Galloway, August 21, 2008, in which the Attorney General's Office expressed concerns about holding a public meeting in a private home in light of the possible "chilling effect" on the public's willingness to attend.

While a city may not require persons wishing to attend public meetings to provide identification as a condition of attendance, it may impose certain security measures on members of the public entering a public building, such as requiring the public to go through metal detectors. AGO 05-13.

### **d. Out-of-town meetings**

The fact that a meeting is held in a public room does not make it public within the meaning of the Sunshine Law; for a meeting to be "public," the public must be given advance notice and provided with a reasonable opportunity to attend. *Bigelow v. Howze*, 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974).

Accordingly, a school board workshop held outside county limits over 100 miles away from the board's headquarters violated the Sunshine Law where the only advantage to the board resulting from the out-of-town gathering (elimination of travel time and expense due to the fact that the board members were attending a conference at the site) did not outweigh the interests of the public in having a reasonable opportunity to attend. *Rhea v. School Board of Alachua County*, 636 So. 2d 1383 (Fla. 1st DCA 1994). The court refused to adopt a rule prohibiting any board workshops from being held at a site more than 100 miles from its headquarters, instead applying a

balancing of interests test to determine which interest predominates in a given case. As stated by the court, "[t]he interests of the public in having a reasonable opportunity to attend a Board workshop must be balanced against the Board's need to conduct a workshop at a site beyond the county boundaries." *Id.* at 1385.

In addition, there may be other statutes which limit where board meetings may be held. See, e.g., s. 125.001, F.S. (meetings of the board of county commissioners may be held at any appropriate public place in the county); s. 1001.372, F.S. (school board meetings may be held at any appropriate public place in the county). *And see* AGOs 08-01, 03-03 and 75-139 (municipality may not hold commission meetings at facilities outside its boundaries).

Conduct which occurs outside the state which would constitute a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business. Section 910.16, F.S.

#### **4. Can restrictions be placed on the public's attendance at, or participation in, a public meeting?**

##### **a. Public's right to attend or record meeting**

###### **(1) Size of meeting facilities**

The Sunshine Law requires that meetings of a public board or commission be "open to the public." For meetings where a large turnout of the public is expected, public boards and commissions should take reasonable steps to ensure that the facilities where the meeting will be held will accommodate the anticipated turnout. Inf. Op. to Galloway, August 21, 2008. Meetings held at a facility which can accommodate only a small number of the public attending, when a large public turnout can reasonably be expected, may violate the public access requirement of s. 286.011, F.S., by unreasonably restricting access to the meeting. If a huge public turnout is anticipated for a particular issue and the largest available public meeting room cannot accommodate all of those who are expected to attend, the use of video technology (e.g., a television screen outside the meeting room) may be appropriate. In such cases, as with other open meetings, reasonable steps to provide an opportunity for public participation in the proceedings should also be considered. *Id.*

###### **(2) Inaudible discussions**

A violation of the Sunshine Law may occur if, during a recess of a public meeting, board members discuss issues before the board in a manner not generally audible to the public attending the meeting. Although such a meeting is not clandestine, it nonetheless violates the letter and spirit of the law. *Rackleff v. Bishop*, No. 89-235 (Fla. 2d Cir. Ct. March 5, 1990). *And see* AGO 7 1-159, stating that discussions of public business which are audible only to "a select few" who are at the table with the board members may violate the "openness" requirement of the law.

### **(3) Exclusion of certain members of the public**

The term "open to the public" as used in the Sunshine Law means open to *all* persons who choose to attend. AGO 99-53. Thus the court in *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), ruled that a procurement committee violated the Sunshine Law by requesting that bidders voluntarily excuse themselves from each others' presentations. The court found that the board's actions "amounted to a *de facto* exclusion of the competitors, especially since the 'request' was made by an official directly involved with the procurement process."

Staff of a public agency clearly are members of the public as well as employees of the agency; they cannot, therefore, be excluded from public meetings. AGO 79-01. Section 286.011, F.S., however, does not preclude the reasonable application of ordinary personnel policies, for example, the requirement that annual leave be used to attend meetings, provided that such policies do not frustrate or subvert the purpose of the Sunshine Law. *Id.*

Although not directly addressing the open meetings laws, courts of other states have ruled that in the absence of a compelling governmental interest, agencies may not single out and exclude a particular news organization or reporter from press conferences. See, e.g., *Times-Picayune Publishing Corporation v. Lee*, 15 Media L. Rep. 1713 (E.D. La. 1988); *Borreca v. Fasi*, 369 F. Supp. 906 (D. Hawaii 1974); *Quad-City Community News Service, Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971); and *Southwestern Newspapers Corporation v. Curtis*, 584 S.W.2d 362 (Tex. Ct. App. 1979).

### **(4) Cameras and tape recorders**

A board or commission may adopt reasonable rules and policies which ensure the orderly conduct of a public meeting and require orderly behavior on the part of those persons attending a public meeting. A board, however, may not ban the use of nondisruptive recording devices. *Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002) (school board's ban on unobtrusive videotaping invalid). Accord AGO 91-28. And see AGO 77-122 (silent nondisruptive tape recording of district meeting permissible).

The Legislature in Ch. 934, F.S., appears to implicitly recognize the public's right to silently record public meetings. AGO 91-28. Chapter 934, F.S., the Security of Communications Act, regulates the interception of oral communications. Section 934.02(2), F.S., however, defines "[o]ral communication" to specifically exclude "any public oral communication uttered at a public meeting." See also Inf. Op. to Gerstein, July 16, 1976, stating that public officials may not complain that they are secretly being recorded during public meetings in violation of s. 934.03, F.S.

#### **b. Public's right to participate in a meeting**

##### **(1) Importance of public participation**

The courts of this state and the Attorney General's Office have recognized the

importance of public participation in open meetings. See AGO 04-53 and cases cited at footnote 6. In *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners*, 810 So. 2d 526 (Fla. 2d DCA 2002), the court held that a county development review committee was subject to the Sunshine Law, and should have allowed public comment before making its decision on a project. Cf. s. 286.0115(2)(b), F.S., providing that "[i]n a quasi-judicial proceeding on local government land use matters, a person who appears before the decisionmaking body who is not a party or a party-intervenor shall be allowed to testify before the decisionmaking body, subject to control by the decisionmaking body; . . . ."

However, the Supreme Court has indicated that there may not be a right under s. 286.011, F.S., for a member of the public to participate in all meetings. See *Wood v. Marston*, 442 So. 2d 934, 941 (Fla. 1983), in which the Court, in reviewing the activities of a committee carrying out executive functions traditionally conducted without public input, stated:

This Court recognizes the necessity for the free exchange of ideas in academic forums, without fear of governmental reprisal, to foster deep thought and intellectual growth. . . . We hasten to reassure respondents that nothing in this decision gives the public the right to be more than spectators.

*And see Law and Information Services v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996), citing *Marston* for the principle that the public does not have a right to speak on all issues prior to resolution of the issue by the board; and *Homestead-Miami Speedway, LLC v. City of Miami*, 828 So. 2d 411 (Fla. 3d DCA 2002) (city did not violate Sunshine Law where there was public participation and debate in some but not all of the meetings concerning a proposed contract). Cf. Inf. Op. to Thrasher, January 27, 1994; and Inf. Op. to Conn, May 19, 1987 (if a committee or board is carrying out legislative responsibilities, the public should be afforded a meaningful opportunity to participate at each stage of the decision-making process, including workshops

Recently, the First District Court of Appeal affirmed a lower court ruling holding that while the Sunshine Law requires meetings to be open to the public, the law does not give the public the right to speak at the meetings. Stating that in the absence of any case construing the phrase "open to the public" to grant the public the right to speak and relying on the "clear and unambiguous language" in *Marston*, the court stated it was "not inclined" to broadly construe the phrase as granting a right to speak at a meeting of a not-for-profit corporation charged by the city with overseeing development of a parcel of public waterfront property. *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-910 (Fla. May 14, 2010). *And see Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-798 (Fla. April 20, 2010) (citizens have authority to attend open meeting but not to participate in or interfere with decision-making process).

## **(2) Authority to adopt reasonable rules**

In providing an opportunity for public participation, the Attorney General's Office has

advised that reasonable rules and policies, which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of those persons attending, may be adopted by a public board. AGOs 04-53 and 91-28. *And see* Inf. Op. to Thrasher, January 27, 1994 (rule limiting amount of time an individual may address the board may be adopted provided that the time limit does not unreasonably restrict the public's right of access); and Inf. Op. to Joseph P. Caetano, July 2, 1996 (board may request that a representative or representatives of each group or faction, rather than all members of the group, address the board).

Although not directly considering the Sunshine Law, the court in *Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989), recognized that "to 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." Thus, the court concluded that a mayor's actions in attempting to confine the speaker to the agenda item in the city commission meeting and having the speaker removed when the speaker appeared to become disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's First Amendment rights. *And see* *Rowe v. City of Cocoa*, 358 F.3d 800 (11th Cir. 2004) (city council's regulation limiting speech of nonresidents during its meetings is viewpoint-neutral and does not violate the First or Fourteenth Amendment rights of nonresidents). *Cf.* AGO 04-53 (statute requiring special district board to hold "a public hearing at which time qualified electors of the district may appear and be heard" does not prohibit nonqualified electors from participating).

##### **5. May the members of a public board use codes or preassigned numbers in order to avoid identifying individuals?**

Section 286.011, F.S., requires that meetings of public boards or commissions be "open to the public at all times." If at any time during the meeting the proceedings become covert, secret or not wholly exposed to the view and hearing of the public, then that portion of the meeting violates the portion of s. 286.011, F.S., requiring that meetings be "open to the public at all times." *See* *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821, 823 (Fla. 1985), disapproving a procedure permitting representatives of the media to attend a city council meeting provided that they agreed to "respect the confidentiality" of certain matters: "Under the Sunshine Law, a meeting is either fully open or fully closed; there are no intermediate categories."

the use of preassigned numbers or codes at public meetings to avoid identifying the names of applicants violates s. 286.011, F.S., because "to permit discussions of applicants for the position of a municipal department head by a preassigned number or other coded identification in order to keep the public from knowing the identities of such applicants and to exclude the public from the appointive or selection process would clearly frustrate or defeat the purpose of the Sunshine Law." AGO 77-48. *Accord* AGO 76-240 (Sunshine Law prohibits the use of coded symbols at a public meeting in order to avoid revealing the names of applicants for the position of city manager). *And see* *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977) ("public policy of this state as expressed in the public records law and the open meetings statute eliminate any notion that the commission was free to conduct the county's personnel



business by pseudonyms or cloaked references").

## **6. May members of a public board vote by written or secret ballot?**

Board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act. See AGO 73-344. *Cf.* AGO 78-117 (in the absence of statutory authority, proxy voting by board members is not allowed).

By contrast, a secret ballot violates the Sunshine Law. See AGO 73-264 (members of a personnel board may not vote by secret ballot during a hearing concerning a public employee). *Accord* AGOs 72-326 and 71-32 (board may not use secret ballots to elect the chairman and other officers of the board).

## **7. Are board members authorized to abstain from voting?**

Section 286.012, F.S., provides:

No member of a ny 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 . . . 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 . . . s. 112.311, s. 112.313, or s. 112.3143, F.S. (e.s.)

A member of a state, county or municipal board who is present at a meeting is thus prohibited from abstaining from voting unless there is, or appears to be, a possible conflict of interest under ss. 112.311, 112.313 or 112.3143, F.S., of the Code of Ethics for Public Officers and Employees. *And see* AGO 02-40 (s. 286.012 applies to advisory board appointed by a county commission). Failure of a member to vote, however, does not invalidate the entire proceedings. *City of Hallandale v. Rayel Corporation*, 313 So. 2d 113 (Fla. 4th DCA 1975), *cause dismissed sua sponte*, 322 So. 2d 915 (Fla. 1975) (to rule otherwise would permit any member to frustrate official action merely by refusing to participate).

Section 286.012, F.S., applies *only* to state, county and municipal boards. AGO 04-21. Special district boards are not subject to its provisions and may adopt their own rules regarding abstention, subject to s. 112.3143, F.S. AGOs 04-21, 85-78 and 78-11.

Section 112.3143(3)(a), F.S., prohibits a county, municipal, or other local public officer from voting on any measure which inures to his or her special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal or parent organization or subsidiary of a corporate principal, other than a public agency, by whom he or she is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer. An exception exists for a commissioner of a community redevelopment agency created or

designated pursuant to s. 163.356, F.S., or s. 163.357, F.S., or an officer of an independent special tax district elected on a one-acre, one-vote basis. Section 112.3143(3)(b), F.S.

For those local officials subject to s. 112.3143(3)(a), F.S., however, no exception exists even though the abstention has the effect of preventing the local legislative body from taking action on the matter. AGO 86-61. Prior to the vote being taken, the local officer must publicly state the nature of his or her interest in the matter from which he is abstaining. Within 15 days of the vote, the officer must disclose the nature of his or her interest in a memorandum filed with the person responsible for recording the minutes of the meeting who shall incorporate the memorandum in the minutes. Section 112.3143(3)(a), F.S.

State public officers are not required to abstain from voting because of a conflict of interest. Section 112.3143(2), F.S. *But see* s. 120.665(1), F.S., applicable to agencies subject to Ch. 120, F.S., the Administrative Procedure Act, stating that "[n]otwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding."

If the state officer votes on a matter which would inure to his or her special private gain or loss, or to the special gain or loss of any principal or parent organization or subsidiary of a corporate principal by which the officer is retained, or to the special private gain or loss of a relative or business associate, the officer is required to disclose the nature of his or her interest in a memorandum. The memorandum must be filed within 15 days after the vote with the person responsible for recording the minutes of the meeting who shall incorporate the memorandum in the minutes. See s. 112.3143(2), F.S.

Although a member of a *state* board or commission is authorized to abstain from voting on a question in which he or she is personally interested, the member is not disqualified from voting; the member may, therefore, be counted for purposes of computing a quorum for a vote on that question. Once a quorum is present, a majority of those members actually voting is sufficient to decide the question. AGO 75-244.

When a member of a *local* board is *required* to abstain pursuant to s. 112.3143(3), F.S., the local board member is disqualified from voting and may not be counted for purposes of determining a quorum. AGOs 86-61 and 85-40.

Questions as to what constitutes a conflict of interest under the above statutes should be referred to the Florida Commission on Ethics.

## **8. Is a roll call vote required?**

While s. 286.012, F.S., requires that each member present cast a vote either for or against the proposal under consideration by the public board or commission, it is not necessary that a roll call vote of the members present and voting be taken so that each member's specific vote on each subject is recorded. The intent of the statute is that all

members present cast a vote and that the minutes so reflect that by either recording a vote or counting a vote for each member. *Ruff v. School Board of Collier County*, 426 So. 2d 1015 (Fla. 2d DCA 1983) (roll call vote so as to record the individual vote of each such member is not necessary). Cf. s. 20.052(5)(c), F.S., requiring that minutes, including a record of all votes cast, be maintained for all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency.

### **9. Must written minutes be kept of all sunshine meetings?**

Section 286.011, F.S., specifically requires that minutes of a meeting of a public board or commission be promptly recorded and open to public inspection. The minutes required to be kept for "workshop" meetings are not different than those required for any other meeting of a public board or commission. AGOs 08-65 and 74-62. *And see Lozman v. City of Riviera Beach*, No. 502007CA007552XXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *appeal pending*, No. 4D09-2703 (Fla. 4th DCA July 9, 2009) (minutes required for city council's agenda review meetings).

While tape recorders may also be used to record the proceedings before a public body, written minutes of the meeting must be taken and promptly recorded. AGO 75-45. *And see* AGO 08-65 (while board may archive the full text of all workshop discussions conducted on the Internet, written minutes of the workshops must also be prepared and promptly recorded).

The term "minutes" in s. 286.011, F.S., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting. AGO 82-47. *And see State v. Adams*, No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992) (no violation of Sunshine Law where minutes failed to reflect brief discussion concerning a proposed inspection trip). However, an agency is not prohibited from using a written transcript of the meeting as the minutes, if it chooses to do so. Inf. Op. to Fulwider, June 14, 1993.

Draft minutes of a board meeting may be circulated to individual board members for corrections and studying prior to approval by the board, so long as any changes, corrections, or deletions are discussed and adopted during the public meeting when the board adopts the minutes. AGOs 02-51 and 74-294. The minutes are public records when the person responsible for preparing the minutes has performed his or her duty even though they have not yet been sent to the board members or officially approved by the board. AGO 91-26. *And see Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, Case No. SC10-798 (Fla. April 20, 2010) (city violated both the language and the purpose of s. 286.011[2] by denying public access to its minutes until after approval).

Section 286.011, F.S., does not specify who is responsible for taking the minutes of public meetings. This appears to be a procedural matter which the individual boards or commissions must resolve. Inf. Op. to Baldwin, December 5, 1990.

### **10. In addition to minutes, does the Sunshine Law require that meetings be transcribed or tape recorded?**

Minutes of Sunshine Law meetings need not be verbatim transcripts of the meetings.

AGO 82-47. Nor does the Sunshine Law require that public boards and commissions tape record their meetings. AGO 86-21. However, once made, such recordings are public records and their retention is governed by schedules established by the Division of Library and Information Services of the Department of State in accordance with s. 257.36(6), F.S. *Id.* Accord AGO 86-93 (tape recordings of school board meetings are subject to Public Records Act even though written minutes are required to be prepared and made available to the public). *And see* AGO 04-15 (tape recordings of staff meetings made at the request of the executive director by a secretary or us e i n preparing minutes of the meeting are public records).

## **G. WHAT ARE THE STATUTORY EXCEPTIONS TO THE LAW?**

### **1. Sunshine Law to be liberally construed while exceptions to the law to be narrowly construed**

As a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed. *See, e.g., Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983). *And see Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980) (rejecting a board's argument that a legislative requirement that certain board meetings must be open to the public implies that the board could meet privately to discuss other matters).

The courts have recognized that the Sunshine Law should be construed so as to frustrate all evasive devices. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979); *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977). As the Florida Supreme Court stated in *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260, 264 (Fla. 1973):

Various boards and agencies have obviously attempted to read exceptions into the Government in the Sunshine Law which do not exist. Even though their intentions may be sincere, such boards and agencies should not be allowed to circumvent the plain provisions of the statute. The benefit to the public far outweighs the inconvenience of the board or agency. If the board or agency feels aggrieved, then the remedy lies in the halls of the Legislature and not in efforts to circumvent the plain provisions of the statute by devious ways in the hope that the judiciary will read some exception into the law.

If a board member is unable to determine whether a meeting is subject to the Sunshine Law, he or she should either leave the meeting or ensure that the meeting complies with the Sunshine Law. *See City of Miami Beach v. Berns, supra* at 41; *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) ("The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.").

## 2. Creation and review of exemptions

Article I, s. 24(b), Fla. Const., requires that all meetings of a collegial public body of the executive branch of state government or of local government, at which official acts are to be taken or at which the public business of such body is to be transacted or discussed, be open and noticed to the public. All laws in effect on July 1, 1993, that limit access to meetings remain in force until they are repealed. Article I, s. 24(d), Fla. Const.

The Legislature is authorized to provide by general law passed by two-thirds vote of each house for the exemption of meetings, provided such law states with specificity the public necessity justifying the exemption and is no broader than necessary to accomplish the stated purpose of the law. Article I, s. 24(c), Fla. Const. See s. 119.011(8), F.S., defining the term "exemption" to include a provision of general law which provides that a "specified . . . meeting, or portion thereof, is not subject to the access requirements" in s. 286.011, F.S., or Art. I, s. 24, Fla. Const. *And see Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (open meetings exemption for certain hospital board meetings unconstitutional because it did not meet the constitutional standard of specificity as to stated public necessity and limited breadth to accomplish that purpose). *Compare Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189, 195 (Fla. 1st DCA 2004), upholding a more recent public meetings exemption because "the constitutional concerns expressed by the Florida Supreme Court in *Halifax*" were met due to a more specific legislative justification accompanied by adequate findings to support the breadth of the exemption.

Section 119.15, F.S., the Open Government Sunset Review Act, provides for legislative review of exemptions from the open government laws. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S. The two-thirds vote requirement for enactment of exemptions set forth in Art. I, s. 24(c), Fla. Const., applies to re-adoption of exemptions as well as initial creation of exemptions. AGO 03-18.

## 3. Statutory exemptions

There are a number of exemptions to the Government in the Sunshine Law. While the exemptions for certain investigative meetings, litigation meetings, and collective bargaining strategy sessions are respectively discussed in subsections D.2, D.3, and D4., *supra*, the following discussion, although by no means comprehensive, summarizes some of the other more significant exemptions which have formed the basis of inquiries to the Attorney General's Office by governmental agencies and the public. For a more complete listing of statutory exemptions, please see Appendix D.

### a. Abuse meetings

Portions of meetings of the State Child Abuse Death Review Committee or local committees at which information made confidential by s. 383.412(1) is discussed are exempt from open meetings requirements. Section 383.412(3), F.S. Although the closed portion of the meeting must be recorded, the recording is exempt from disclosure. *Id.*

Portions of meetings of domestic violence fatality review teams regarding domestic violence fatalities and their prevention, during which confidential or exempt information, the identity of the victim, or the identity of the victim's children is discussed, are exempt from s. 286.011, F.S. Section 741.3165(2), F.S.

Portions of meetings of the statewide or local advocacy councils which relate to the identity of clients, which relate to the identity of individuals providing information about abuse or alleged violation of rights, or where testimony is provided relating to records otherwise made confidential by law are not subject to open meetings requirements. Sections 402.165(8)(c) and 402.166(8)(c), F.S. See AGO 06-34 (members of local advocacy council, who are attending a closed session of the statewide advocacy council during the discussion of one of the local council's cases, may not remain in the closed session when the statewide advocacy council is considering cases from other advocacy councils which are unrelated to the local advocacy council's cases).

#### **b. Economic development meetings**

While s. 288.075(2), F.S., allows a private corporation to request confidentiality for certain records relating to its plans to locate or relocate in Florida, this exemption "applies only to records and does not constitute an exemption from the provisions of the Government in the Sunshine Law . . . ." AGO 04-19. *Accord* AGO 80-78. *Compare* s. 288.9551(3), F.S. (Scripps Florida Funding Corporation); s. 288.982(2), F.S. (Governor's Advisory Council on Base Realignment and Closure); and s. 331.326, F.S. (Space Florida), providing limited exemptions from the Sunshine Law for certain discussions of confidential records. *Cf.* s. 286.0113(2), F.S., providing an exemption from the Sunshine Law for a meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(1), F.S., and providing that a complete recording must be made of any exempt meeting.

#### **c. Education meetings**

Student expulsion hearings are exempt from the Sunshine Law although the student's parent must be given notice of the provisions of s. 286.011, F.S., and may elect to have the hearing held in compliance with that section. Section 1006.07(1)(a), F.S. See AGO 93-03.

Hearings on an exceptional student's placement or denial of placement in a special education program are exempt from s. 286.011, F.S., except to the extent that the State Board of Education adopts rules establishing other procedures. Section 1003.57(1)(b), F.S.

Meetings of the Florida Technology, Research, and Scholarship Board at which information made confidential by s. 1004.226, F.S., is discussed is exempt from s. 286.011, F.S., and Art. I, s. 24(b), Fla. Const. Section 1004.226(8)(b)1., F.S.

Although s. 1002.22, F.S., makes the education records of students confidential, this exemption does not close the meetings of a school board in which such records may be considered. AGO 10-04.

#### **d. Hearings involving minors**

Dependency adjudicatory hearings are open; however, a judge by special order may close any hearing to the public upon determining that the public interest or the welfare of the child is best served by closure. Section 39.507(2), F.S. *And see Mayer v. State*, 523 So. 2d 1171 (Fla. 2d DCA), *review dismissed*, 529 So. 2d 694 (Fla. 1988) (former version of statute requiring hearings to be closed did not violate First Amendment freedom of press rights). Hearings for the appointment of a guardian advocate are confidential and closed to the public. Section 39.827(4), F.S.

All hearings involving termination of parental rights are confidential. Section 39.809(4), F.S. *See Natural Parents of J.B. v. Florida Department of Children and Family Services*, 780 So. 2d 6 (Fla. 2001), upholding the constitutionality of the statute. *And see J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law does not apply to Department of Children and Families permanency staffing meetings conducted to determine whether to file petition to terminate parental rights). *Cf. Stanfield v. Florida Department of Children and Families*, 698 So. 2d 321 (Fla. 3d DCA 1997) (trial court may not issue a "gag" order preventing a woman from discussing a termination of parental rights case because "[t]he court cannot prohibit citizens from exercising their First Amendment right to publicly discuss knowledge that they have gained independent of court documents even though the information may mirror the information contained in court documents").

Hearings held under the Florida Adoption Act are closed. Section 63.162(1), F.S. *See In re Adoption of H.Y.T.*, 458 So. 2d 1127 (Fla. 1984) (statute providing that all adoption hearings shall be held in closed court is not unconstitutional).

Except as provided in s. 918.16(2), the judge shall clear the courtroom, except for listed individuals, in a criminal or civil trial when any person under 16 years of age or any person with mental retardation is testifying concerning any sex offense. Section 918.16(1), F.S. When the victim of a sex offense is testifying concerning that offense, the court shall clear the courtroom, except for listed individuals, upon request of the victim, regardless of the victim's age or mental capacity. Section 918.16(2), F.S. *Cf. Pritchett v. State*, 566 So. 2d 6 (Fla. 2d DCA), *review dismissed*, 570 So. 2d 1306 (Fla. 1990) (where a trial court failed to make any findings to justify closure, application of s. 918.16, F.S., to the trial of a defendant charged with capital sexual battery violates the defendant's constitutional right to a public trial). *Accord Kovalski v. State*, 854 So. 2d 282 (Fla. 4th DCA 2003), *cause dismissed*, 860 So. 2d 978 (Fla. 2003).

All hearings conducted in accordance with a petition for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy, shall remain confidential and closed to the public, as provided by court rule. Section 390.01114(4)(e), F.S.

#### **e. Hearings to obtain HIV test results**

While the test results for human immunodeficiency virus infection are confidential and may be released only as prescribed by statute, a person may be allowed access to the results by court order if he or she demonstrates a compelling need for the results

which cannot be accommodated by other means. The court proceedings in these cases are to be conducted *in camera* unless the person tested agrees to a hearing in open court or the court determines that a public hearing is necessary to the public interest and the proper administration of justice. Section 381.004(3)(e)9., F.S.

## **f. Hospitals**

### **(1) Public hospitals and health facilities**

The meetings of peer review panels, committees and governing bodies of hospitals or ambulatory surgical centers licensed in accordance with Ch. 395, F.S., which relate to disciplinary actions and are held to achieve the objectives of such panels, committees, or governing boards, are exempt from s. 286.011, F.S. Section 395.0193(7), F.S. The meetings of the committees and governing board of a licensed facility held solely for the purpose of achieving the objectives of risk management are not open to the public. Section 395.0197(14), F.S. See AGO 92-29, stating that to the extent a meeting of the board of directors and the medical staff's quality assurance committee deal with carrying out cited risk management statutes, the meeting is exempt from the open meeting requirements of s. 286.011, F.S.

Similar exemptions for portions of meetings which relate solely to patient care quality assurance are found in ss. 381.0055(3) (Department of Health and Local Health Agencies); 394.907(7) (community mental health centers); and 395.51(3), F.S. (trauma agencies). *And see* ss. 400.119(2)(a) (long-term care facilities); 401.425(5) (emergency medical services); 766.101(7)(c) (medical review committee proceedings); and 945.6032(3), F.S. (medical review committee created by Correctional Medical Authority or Department of Corrections).

Those portions of a meeting of a public hospital's governing board at which negotiations for contracts with nongovernmental entities occur or are reported on when such negotiations concern services that are or are reasonably expected to be provided by the hospital's competitors are exempt from public meetings requirements. Section 395.3035(3), F.S. However, meetings at which the governing board is scheduled to vote on contracts, except managed care contracts, are open. *Id.* In addition, those portions of meetings at which certain written strategic plans are considered are exempt from open meetings requirements although a hospital may not approve a binding agreement to implement a strategic plan at any closed meeting. Section 395.3035(4) and (8), F.S. The Attorney General's Office has suggested that the governing body strictly limit attendance at meetings closed pursuant to s. 395.3035, F.S., to only those individuals who are essential to the purpose of the meeting in order to avoid what the courts might consider to be a disclosure to the public. AGO 07-28. While the board is not required to give notice of the closed meeting to discuss the hospital's strategic plan, before such a plan may be implemented it must be discussed at a public meeting noticed in accordance with section 286.011 and, if the strategic plan involves a substantial reduction in the level of medical services provided to the public, such notice must be given at least 30 days prior to the meeting at which the governing board considers the decision to implement the strategic plan. *Id.*



That portion of a public meeting which would reveal information contained in a comprehensive emergency management plan that addresses the response of a hospital to an act of terrorism is exempt from open meetings requirements. Section 395.1056(4), F.S.

Any portion of the meeting of the governing board, peer review panel, or committee meeting of a university health services support organization during which a confidential and exempt contract, document, record, marketing plan, or trade secret is discussed is exempt from s. 286.011, F.S. Section 1004.30(3), F.S. *And see* s. 409.91196(2), F.S. (that portion of a meeting of the Medicaid Pharmaceutical and Therapeutics Committee at which the rebate amount, percent of rebate, manufacturer's pricing, or supplemental rebate, or other trade secrets that the Agency for Health Care Administration has identified for use in negotiations, are discussed is exempt from open meetings requirements).

That portion of a long term care ombudsman council meeting in which the council discusses information that is confidential and exempt from s. 119.07(1), F.S., is closed to the public. Section 400.0077(2), F.S. *And see* s. 641.68, F.S. (managed care ombudsman committee).

## **(2) Private or nonprofit corporations operating public health facilities**

Section 395.3036, F.S., provides that meetings of the governing board of a private corporation that leases a public hospital or health care facility are exempt from open meetings requirements when the public lessor complies with the public finance accountability provisions of s. 155.40(5), F.S., with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of the five criteria set forth in the exemption. *See Indian River County Hospital District v. Indian River Memorial Hospital Inc.*, 766 So. 2d 233 (Fla. 4th DCA 2000). *See also Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (exemption is constitutional). *Cf. Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 927 So. 2d 961 (Fla. 5th DCA 2006) (private corporation that purchased hospital from public hospital authority is not subject to open government requirements). *And see* s. 155.40(8), F.S., describing and construing the term "complete sale" as applied to the purchase of a public hospital by a private entity.

Meetings of the governing body of the not-for-profit corporation operating the H. Lee Moffitt Cancer Center and Research Institute, or its subsidiaries, are also exempt except that meetings at which expenditures of dollars appropriated to the corporation by the state are discussed must remain open to the public, unless made confidential or exempt by law. Section 1004.43(9), F.S. *And see* s. 1004.4472(4), F.S. (portions of meetings of the Florida Institute for Human and Machine Cognition, Inc., or its subsidiary at which confidential and exempt information is presented may be closed). *Cf.* AGO 07-27 (local health councils, which may be public or private nonprofit corporations, whose duties are prescribed by s. 408.033, F.S., and who provide an integral role in the decision-making process of the Agency for Health Care Administration in providing for the coordinated planning of health care services within the state, are subject to s. 286.011, F.S.).

## **g. Insurance meetings**

Proceedings and hearings relating to the actions of the Office of Insurance Regulation regarding an insurer's risk-based capital plan or report are exempt from s. 286.011, F.S., except as otherwise provided in the section. Section 624.40851(2), F.S. Portions of meetings of the Citizens Property Insurance Corporation and of the Florida Automobile Joint Underwriting Association where confidential underwriting files or confidential open claims files are discussed are closed to the public. Sections 627.351(6)(x)4. and 627.311(4)(b), F.S. Meetings of the subscriber assistance panel are open to the public unless the provider or subscriber whose grievance will be heard requests a closed meeting or the Agency for Health Care Administration or the Department of Financial Services determines that information relating to subscriber medical history or to internal risk management programs may be revealed, in which case that portion of the meeting is exempt from the Sunshine Law. Section 408.7056(14)(b), F.S.

That portion of a meeting of the Florida Commission on Hurricane Loss Projection Methodology or of a rate proceeding on an insurer's rate filing at which a confidential trade secret is discussed is exempt from open meetings requirements. Section 627.0628(3)(f)2., F.S. Although the closed portion of the meeting must be recorded, the recording is exempt from disclosure. *Id.*

Discussions involving officials of the Department of Financial Services and an insurance company relating to investigation of fraudulent insurance claims are confidential and exempt from s. 286.011, F.S. Section 633.175(5), F.S. *And see ss.* 631.724 (certain negotiations or meetings of the Florida Life and Health Insurance Guaranty Association); 631.932 (negotiations between an insurer and the Florida Workers' Compensation Insurance Guaranty Association); and 440.3851(3)(a), F.S. (portions of meetings of board of directors of Florida Self-Insurers Guaranty Association, Incorporated, at which confidential records are discussed).

Meetings held by the board of governors of the Florida Workers' Compensation Joint Underwriting Association, Inc., or any subcommittee of the association's board, to discuss records made confidential by s. 627.3121, F.S., are exempt. Section 627.3121(4), F.S.

## **h. Security and criminal justice meetings**

Meetings relating to the security systems for any property owned by or leased to the state or any of its political subdivisions or for any privately owned or leased property which is in the hands of an agency are exempt from s. 286.011, F.S. Section 281.301, F.S. This statute exempts meetings of a board when the board discusses issues relating to the security systems for any property owned or leased by the board or for any privately owned or leased property which is in the possession of the board. The statute does not merely close such meetings; it exempts the meetings from the requirements of s. 286.011, F.S., such as notice. AGO 93-86. *And see s.* 286.0113(1), F.S., stating that the portion of a meeting that would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a), F.S. (providing an exemption from

the Public Records Act for a "security system plan") is exempt from open meetings requirements.

The Florida Violent Crime and Drug Control Council may close portions of meetings during which the council will hear or discuss active criminal investigative information or active criminal intelligence information, provided that specified conditions are met as set forth in the exemption. Section 943.031(7)(c), F.S. *And see* s. 943.0314, F.S. (Domestic Security Oversight Council).

#### **i. Licensure examination meetings**

There are several exemptions for meetings at which licensure examination questions and answers are discussed. *See, e.g.,* s.s. 456.017(4), F.S. (board within Department of Health), 455.217(5), F.S. (boards within Department of Business and Professional Regulation); 497.172(1)(a), F.S. (Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services); 472.0131(5), F.S. (Board of Professional Surveyors and Mappers within Department of Agriculture and Consumer Services).

#### **4. Special act exemptions**

Prior to July 1, 1993, exemptions from the Sunshine Law could be created by special act. Article I, s. 24, Fla. Const., however, now limits the Legislature's ability to enact an exemption from the constitutional right of access to open meetings established thereunder. While exemptions in effect on July 1, 1993, remain in force until repealed, the Constitution requires that exemptions enacted after that date must be by general law. Such law must state with specificity the public necessity for the exemption and be no broader than necessary to accomplish that stated purpose.

### **H. WHAT ARE THE CONSEQUENCES IF A PUBLIC BOARD OR COMMISSION FAILS TO COMPLY WITH THE SUNSHINE LAW?**

#### **1. Criminal penalties**

Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree. Section 286.011(3)(b), F.S. A person convicted of a second degree misdemeanor may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S. The criminal penalties apply to members of advisory councils subject to the Sunshine Law as well as to members of elected or appointed boards. AGO 01-84 (school advisory council members).

Conduct which occurs outside the state which constitutes a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3)(c), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business while violations occurring within the state may be prosecuted in that county. Section 910.16, F.S.

## 2. Removal from office

When a method for removal from office is not otherwise provided by the Constitution or by law, the Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising directly out of his or her official duties. Section 112.52(1), F.S. If convicted, the officer may be removed from office by executive order of the Governor. Section 112.52(3), F.S. A person who pleads guilty or nolo contendere or who is found guilty is, for purposes of s. 112.52, F.S., deemed to have been convicted, notwithstanding the suspension of sentence or the withholding of adjudication. *Id. Cf.* s. 112.51, F.S., and Art. IV, s. 7, Fla. Const.

## 3. Noncriminal infractions

Section 286.011(3)(a), F.S., imposes noncriminal penalties for violations of the Sunshine Law by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. The state attorney may pursue such actions on behalf of the state. *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). *Accord* AGO 91-38. *Cf. State v. Foster*, 13 F.L.W. Supp. 385a (Fla. 17th Cir. Ct. January 25, 2006) (no right to jury trial is triggered when an individual faces a noncriminal violation of the Sunshine Law).

If a nonprofit corporation is subject to the Sunshine Law, its board of directors constitute "public officers" for purposes of s. 286.011(3)(a), F.S. AGO 98-21. See *Goosby v. State*, Case No. GF 05-(001122-001130,001135)-BA (Fla. 10th Cir. Ct. December 22, 2006), *cert. denied*, Case No. 2D07-281 (Fla. 2d DCA May 25, 2007) (members of the Polk County Opportunity Council, which had assumed and exercised a delegated governmental function, were "public officers" for purposes of the Sunshine Law and subject to the imposition of the noncriminal infraction fine).

## 4. Attorney's fees

Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Section 286.011(4), F.S. See *Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233, 235 (Fla. 4th DCA 2000), concluding that the trial court erred by failing to assess attorney's fees against a nonprofit hospital corporation found to have violated the Sunshine Law. *And* see s. 286.011(5), F.S., authorizing the assessment of attorney fees if a board appeals an order finding the board in violation of the Sunshine Law and the order is affirmed.

While s. 286.011(4), F.S., authorizes an award of appellate fees if a person successfully appeals a trial court order denying access, the statute "does not supersede the appellate rules, nor does it authorize the trial court to make an initial award of appellate attorney's fees." *School Board of Alachua County v. Rhea*, 661 So. 2d 331 (Fla. 1st DCA 1995), *review denied*, 670 So. 2d 939, 332 (Fla. 1996). Thus, a person prevailing on appeal must file an appropriate motion in the appellate court in order to receive appellate attorney's fees. *Id.* If a board appeals an order finding the board in violation of the Sunshine Law, and the order is affirmed, "the courts shall assess a reasonable attorney's fee for the appeal" against the board. Section 286.011(5), F.S.

Attorney's fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney, such fees may not be assessed against the individual members of the board. Section 286.011(4) and (5), F.S.

If a member of a board or commission charged with a violation of s. 286.011, F.S., is subsequently acquitted, the board or commission is authorized to reimburse that member for any portion of his or her reasonable attorney's fees. Section 286.011(7), F.S. *Cf.* AGO 86-35, stating that this subsection does not authorize the reimbursement of attorney's fees incurred during an investigation of alleged sunshine violations when no formal charges were filed, although common law principles may permit such reimbursement.

Reasonable attorney's fees may be assessed *against* the individual filing an action to enforce the provisions of s. 286.011, F.S., if the court finds that it was filed in bad faith or was frivolous. Section 286.011(4), F.S. The fact that a plaintiff may be unable to prove that a secret meeting took place, however, does not necessarily mean that attorney's fees will be assessed. *See Bland v. Jackson County*, 514 So. 2d 1115, 1116 (Fla. 1st DCA 1987), concluding that although the plaintiff was unable to prove that a meeting in violation of the Sunshine Law took place, the evidence showed that the county commission unanimously voted on the issue in an open public meeting without identifying what they were voting on and without any discussion and under these circumstances an inference might reasonably be drawn that the commissioners had no need to discuss the action being taken because they had already discussed and decided the issue before the public meeting.

## **5. Civil actions for injunctive or declaratory relief**

Section 286.011(2), F.S., states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. While normally irreparable injury must be proved by the plaintiff before an injunction may be issued, in Sunshine Law cases the *mere showing* that the law has been violated constitutes "irreparable public injury." *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); and *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). The plaintiff's burden is to "establish by the greater weight of the evidence" that a meeting which should have been held in the sunshine took place on the date alleged. *Lyon v. Lake County*, 765 So. 2d 785, 789 (Fla. 5th DCA 2000).

A complaint for injunctive relief 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 Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988). *And see Forehand v. School Board of Gulf County, Florida*, 600 So. 2d 1187 (Fla. 1st DCA 1992) (plaintiff was not denied a fair and impartial hearing because the board only briefly deliberated in public before a vote was taken as there was no evidence that the board had privately deliberated on this issue); and *Law and Information Services v. City of Riviera Beach*, 670 So. 2d 1014 (Fla. 4th DCA 1996) (patent speculation, absent any allegation that a nonpublic meeting in fact occurred, is

insufficient to state a cause of action).

Future violations may be enjoined by the court where one violation has been found and it appears that the future violation will bear some resemblance to the past violation or that the danger of future violations can be anticipated from the course of conduct in the past. *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969). See *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (trial court's permanent injunction affirmed). Compare *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1170n. 1 (Fla. 2d DCA 1999), in which the court noted that had a citizen appealed the trial court's denial of her motion for temporary injunction based on a selection committee's alleged violation of the Sunshine Law, the appellate court "would have had the opportunity to review this matter before the project was completed and 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."

Although a court cannot issue a blanket order enjoining any violation of the Sunshine Law on a showing that it was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995). The future conduct must be "specified, with such reasonable definiteness and certainty that the defendant could readily know what it must refrain from doing without speculation and conjecture." *Id.*, quoting from *Board of Public Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969). And see *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (trial court's permanent injunction affirmed); and *Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *appeal pending*, No. 4D09-2703 (Fla. 4th DCA July 8, 2009) (grant of injunctive relief against a future violations of city to record minutes of certain meetings appropriate in light of city's past conduct and consistent refusal to record such minutes even after being advised to do so by the city attorney and because the city "has continuously taken the legal position that local governments are not required by the Sunshine Law to record minutes").

Declaratory relief is not appropriate where no present dispute exists but where governmental agencies merely seek judicial advice different from that advanced by the Attorney General and the state attorney, or an injunctive restraint on the prosecutorial discretion of the state attorney. *Askew v. City of Ocala*, 348 So. 2d 308 (Fla. 1977).

## **6. Validity of action taken in violation of the Sunshine Law and subsequent corrective action**

Section 286.011, F.S., provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law is void *ab initio*. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979) (resolutions made during

meetings held in violation of s. 286.011, F.S., had to be re-examined and re-discussed in open public meetings); *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (selection committee rankings resulting from a meeting held in violation of the Sunshine Law are void *ab initio* and agency enjoined from entering into contract based on such rankings); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under s. 286.011, F.S.); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-798 (Fla. April 20, 2010) (by failing to open its minutes to public inspection and copying in a timely and reasonable manner, prejudice is presumed and therefore city's approval of minutes is null and void *ab initio*).

Such a violation need not be "clandestine" in order for a contract to be invalidated because "the principle that a Sunshine Law violation renders void a resulting official action does not depend upon a finding of intent to violate the law or resulting prejudice." *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1171 (Fla. 4th DCA 1995). *But see Killearn Properties, Inc. v. City of Tallahassee*, 366 So. 2d 172 (Fla. 1st DCA 1979), *cert. denied*, 378 So. 2d 343 (Fla. 1979) (city which had received benefits under contract was estopped from claiming contract invalid as having been entered into in violation of the Sunshine Law).

Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the sunshine," the decision of the board or commission will not be disturbed. *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981). *Accord Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (Sunshine violations "can be cured by independent, final action completely in the Sunshine"); and *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008) (inadvertent Sunshine violation by school board was cured by subsequent well attended public hearings where rezoning plan was the subject of extensive public comment and debate before being adopted). *And see Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 861 (Fla. 3d DCA 1994) (adoption of the open government constitutional amendment, Art. I, s. 24, Fla. Const., did not overrule the *Tolar* "standard of remediation"). *Cf. Board of County Commissioners of Sarasota County v. Webber*, 658 So. 2d 1069 (Fla. 2d DCA 1995) (no evidence suggesting that board members met in secret during a recess to reconsider and deny a variance and then perfunctorily ratified this decision at the public hearing held a few minutes later); *B.M.Z. Corporation v. City of Oakland Park*, 415 So. 2d 735 (Fla. 4th DCA 1982) (where no evidence that any decision was made in private, subsequent formal action in sunshine was not merely perfunctory ratification of secret decisions or ceremonial acceptance of secret actions).

Thus, in a case involving the validity of a lease approved by a board of county commissioners after an advisory committee held two unnoticed meetings regarding the lease, a court held that the Sunshine Law violations were cured when the board of county commissioners held open public hearings after the unnoticed meetings, an effort was made to make available to the public the minutes of the unnoticed meetings, the

board approved a lease that was markedly different from that recommended by the advisory committee, and most of the lease negotiations were conducted after the advisory committee had concluded its work. *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860-861 (Fla. 3d DCA 1994). The court also said that the adoption of the open government constitutional amendment, found at Art. I, s. 24 of the Florida Constitution, did not overrule the *Tolar* "standard of remediation." *Id.* at 861.

It must be emphasized, however, that only a full open hearing will cure the defect; a violation of the Sunshine Law will not be cured by a perfunctory ratification of the action taken outside of the sunshine. *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988). For example, in *Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998), *review denied*, 735 So. 2d 1284 (Fla. 1999), the Fourth District explained why a subsequent city council meeting did not cure the council's prior violation of the Sunshine Law:

It is evident from the record that the meeting was not a full reexamination of the issues, but rather, was merely the perfunctory acceptance of the City's prior decision. This was not a full, open public hearing convened for the purpose of enabling the public to express its views and participate in the decision-making process. Instead, this was merely a Council meeting which was then opened to the public for comment at the City's request. There was no significant discussion of the issues or a discourse as to the language sought to be included. The City Councilmen were provided with transcripts of the hearings, but none reviewed the language previously approved, and the Council subsequently voted to deny reconsideration of the wording.

Similarly, a public hearing held by a county commission following an advisory committee's violation of the Sunshine Law failed to cure the "Sunshine Law problem" because the county commission did not "review the complete deliberative process fully in the sunshine." *Florida Keys Aqueduct Authority v. Board of County Commissioners, Monroe County, Florida*, No. CA-K-00-1170 (Fla. 16th Cir. Ct. May 16, 2001). "Where there are secret or non-public meetings by an advisory board . . . the problem can be cured, but only by scheduling a new meeting of an appropriate deliberative body which will cover the same subject matter previously covered in violation of the Sunshine Law." *Id.* And see *Gateway Southeast Properties, Inc. v. Town of Medley*, 14 F.L.W. Supp. 20a (Fla. 11th Cir. Ct. October 24, 2006) (subsequent public meeting did not cure the defects of earlier closed meeting where no evidence was presented and no questions asked or discussion pursued by council members at subsequent open meeting).

## **7. Damages**

The only remedies provided for in the Sunshine Law are a declaration of the wrongful action as void and reasonable attorney fees. *Dascott v. Palm Beach County*, 988 So. 2d 47 (Fla. 4th DCA 2008), *review denied*, 6 So. 3d 51 (Fla. 2009) (equitable recovery of back pay not authorized for employment termination conducted in violation of Sunshine Law).



## PART II

### PUBLIC RECORDS

#### A. WHAT IS THE SCOPE OF THE PUBLIC RECORDS ACT?

Florida's Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge.

A right of access to records is also recognized in Art. I, s. 24, Fla. Const., which applies to virtually all state and local governmental entities, including the legislative, executive and judicial branches of government. The only exceptions are those established by law or by the Constitution. The complete text of Art. I, s. 24, Fla. Const., may be found in Appendix A.

#### B. WHAT IS A PUBLIC RECORD WHICH IS OPEN TO INSPECTION AND COPYING?

##### 1. What materials are public records?

Section 119.011(12), F.S., defines "public records" to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). The complete text of Ch. 119, F.S., the Public Records Act, is found in Appendix C. *Cf. Inf. Op. to Burke*, April 14, 2010 (state licensing board, and not the Attorney General's Office, must determine whether letter, allegedly sent to the board by mistake, was received in connection with the transaction of board business).

The term "public record" is not limited to traditional written documents. As the statutory definition states, "tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission" can all constitute public records. Accordingly, "the form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business." AGO 04-33. *And see National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla.

1st DCA 2009), *review denied*, 37 So. 3d 848 ( Fla. 2010) ("public records law is not limited to paper documents but applies, as well, to documents that exist only in digital form"). *Compare Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), *review denied*, 919 So. 2d 436 (Fla. 2005) (unused or unvoted Florida punch card ballots from 2000 election do not constitute public records because they do not "perpetuate, communicate, or formalize knowledge," but a ballot becomes a public record once it is voted because at that point "the voted ballot, as received by the supervisor of elections in a given county, has memorialized the act of voting").

Clearly, as technology changes the means by which agencies communicate, manage, and store information, public records will take on increasingly different forms. Yet, the comprehensive scope of the term "public records" will continue to make the information open to inspection, unless exempted by law. The broad definition of the term "public record" can be seen in numerous Attorney General Opinions and court decisions. The following are some examples of materials found by the Attorney General's Office to constitute public records: anonymous letters sent to city officials containing allegations of misconduct by city employees, AGO 04-22; guardianship files audit prepared by the clerk of court, AGO 04-33; list of subscribers to state publication, AGO 85-03; salary records of assistant state attorneys, AGO 73-30; tape recording of a staff meeting, AGO 04-15; travel itineraries and plane reservations for use of state aircraft, AGO 72-356; and videotaped training film, AGO 88-23.

Article I, s. 24, Fla. Const., establishes a constitutional right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted pursuant to Art. I, s. 24, Fla. Const., or specifically made confidential by the Constitution. *See State ex rel. Clayton v. Board of Regents*, 635 So. 2d 937 (Fla. 1994) ("[O]ur Constitution requires that public officials must conduct public business in the open and that public records must be made available to all members of the public."). The complete text of Art. I, s. 24, Fla. Const., the Public Records and Meetings Amendment, may be found in Appendix A.

## **2. When are notes or nonfinal drafts of agency proposals subject to Ch. 119, F.S.?**

There is no "unfinished business" exception to the public inspection and copying requirements of Ch. 119, F.S. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an agency. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980). "Interoffice 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." 379 So. 2d at 640. *Cf. Gannett Corporation, Inc. v. Goldtrap*, 302 So. 2d 174 (Fla. 2d DCA 1974) (county's concern that premature disclosure of a report could be harmful to the county does not make the document confidential).

Accordingly, any agency document, however prepared, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label. Examples of such materials would include interoffice memoranda, preliminary drafts of agency rules or proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.

In each of these cases, the fact that the records are part of a preliminary process does not detract from their essential character as public records. See *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990) (while the mere preparation of documents for submission to a public body does not create public records, the documents can become public records when exhibited to public officials and revised as part of a bargaining process); *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 229 (Fla. 3d DCA 1998) (book selection forms completed by state university instructors and furnished to campus bookstore "are made in connection with official business, for memorialization and communication purposes" and are public records); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-798 (Fla. April 20, 2010) (canvassing board's minutes, although not yet considered by city commission for its approval, constituted board's final work product and are subject to disclosure); and AGO 91-26 (minutes of city council meetings are public records once minutes have been prepared by clerk even though not yet sent to city council members or officially approved by the city council). Thus, such records are subject to disclosure unless the Legislature has specifically exempted the documents from inspection or has otherwise expressly acted to make the records confidential. See, e.g., s. 119.071(1)(d), F.S., providing a limited work product exemption for agency attorneys.

Similarly, "personal" notes can constitute public records if they are intended to communicate, perpetuate or formalize knowledge of some type. For example, the handwritten notes prepared by the assistant city labor attorney during her interviews with city personnel are public records when those notes are used to communicate information to the labor attorney regarding possible future personnel actions. AGO 05-23. See also *City of Pinellas Park, Florida v. Times Publishing Company*, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001) (rejecting city's argument that employee responses to survey are "notes" which are not subject to disclosure because "as to each of the employees, their responses were prepared in connection with their official agency business and they were 'intended to perpetuate, communicate, or formalize knowledge' that they had about their department"); and *Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (handwritten notes of agency staff, "utilized to communicate and formulate knowledge within [the agency] are public records subject to no exemption"); *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007) (memorandum prepared by a city commissioner after meeting with a former city official, summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure as memorandum was not a draft or a note containing mental impressions that would later form a part of a government record, but rather

formalized and perpetuated his final knowledge gained at the meeting).

However, "under chapter 119 public employees' notes to themselves *which are designed for their own personal use* in remembering certain things do not fall within the definition of 'public record.'" (e.s). *The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). *Accord Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys' own personal use are not public records; Inf. Op. to Trovato, June 2, 2009. (to the extent city commissioner has taken notes for his own personal use and such notes are not intended to perpetuate, communicate, or formalize knowledge, personal notes taken at a workshop or during a commission meeting would not be considered public records).

### **C. WHAT AGENCIES ARE SUBJECT TO THE PUBLIC RECORDS ACT?**

Section 119.011(2), F.S., defines "agency" to include:

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.

In addition, Art. I, s. 24(a), Fla. Const., establishes a constitutional right of access to "any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to those records exempted pursuant to this section or specifically made confidential by this Constitution." This constitutional right of access includes the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution.

#### **1. Advisory boards**

The definition of "agency" for purposes of Ch. 119, F.S., is not limited to governmental entities. A "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency" is also subject to the requirements of the Public Records Act. See also Art. I, s. 24(a), Fla. Const., providing that the constitutional right of access to public records extends to "any public body, officer, or employee of the state, *or persons acting on their behalf . . .*" (e.s.)

Thus, the Attorney General's Office has concluded that the records of an employee advisory committee, established pursuant to special law to make recommendations to a public hospital authority, are subject to Ch. 119, F.S., and Art. I, s. 24(a), Fla. Const. AGO 96-32. *And see* Inf. Op. to Nicoletti, November 18, 1987, stating that the Loxahatchee Council of Governments, Inc., formed by eleven public agencies to study and make recommendations on local governmental issues was an "agency" for purposes of Ch. 119, F.S.

## **2. Private organizations**

A more complex question is presented when a private corporation or entity provides services for, or receives funds from, a governmental body. The term "agency" as used in the Public Records Act includes private entities "acting on behalf of any public agency." Section 119.011(2), F.S. The Florida Supreme Court has stated that this broad definition of "agency" ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). *Cf. Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 229n.4 (Fla. 3d DCA 1998) (private company operating state university bookstores is an "agency" as defined in s. 119.011(2), F.S., "[n]otwithstanding the language in its contract with the universities that purports to deny any agency relationship"). While the mere act of contracting with, or receiving public funds from, a public agency is not sufficient to subject a private entity to Ch. 119, F.S., the following discussion considers when the statute has been held applicable to private entities.

### **a. Private entities created pursuant to law or by public agencies**

The fact that a private entity is incorporated as a nonprofit corporation is not dispositive as to its status under the Public Records Act, but rather the issue is whether the entity is "acting on behalf of" a public agency. The Attorney General's Office has issued numerous opinions advising that if a private entity is created by law or by a public agency, it is subject to Ch. 119 disclosure requirements. The following are some examples of such entities: Pace Property Finance Authority, Inc., created as a Florida nonprofit corporation by Santa Rosa County to provide assistance in the funding and administration of certain governmental programs, AGO 94-34; South Florida Fair and Palm Beach County Expositions, Inc., created pursuant to Ch. 616, F.S., AGO 95-17; rural health networks established as nonprofit legal entities to plan and deliver health care services on a cooperative basis pursuant to s. 381.0406, F.S., Inf. Op. to Ellis, March 4, 1994.

### **b. Private entities contracting with public agencies or receiving public funds**

There is no single factor which is controlling on the question of when a private corporation, not otherwise connected with government, becomes subject to the Public Records Act. However, the courts have held that the mere act of contracting with a public agency is not dispositive. *See, e.g., News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., supra* (private corporation does not act "on behalf of" a public agency merely by entering into a contract to provide architectural services to the agency); *Parsons & Whittemore, Inc. v. Metropolitan Dade County*, 429 So. 2d 343 (Fla. 3d DCA 1983); *Stanfield v. Salvation Army*, 695 So. 2d 501, 503 (Fla. 5th DCA 1997) (contract with county to provide services does not in and of itself subject the organization to Ch. 119 disclosure requirements). *And see Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970 (Fla. 2d DCA 2002) (fact that private development is located on land the developer leased from a governmental agency does not transform the leases between the developer and other

private entities into public records).

Similarly, the receipt of public funds, standing alone, is not dispositive of the organization's status for purposes of Ch. 119, F.S. See *Sarasota Herald-Tribune Company v. Community Health Corporation, Inc.*, 582 So. 2d 730 (Fla. 2d DCA 1991) (mere provision of public funds to the private organization is not an important factor in this analysis, although the provision of a substantial share of the capitalization of the organization is important); *Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999) (attorneys retained by individual commissioners in a criminal matter were not "acting on behalf of" a public agency for purposes of Ch. 119, F.S., even though county commissions subsequently voted to pay the legal expenses in accordance with a county policy providing for reimbursement of legal expenses to officers successfully defending charges filed against them arising out of the performance of their official duties); and *State v. Bartholomew*, No. 08-5656CF10A (Fla. 17th Cir. Ct. August 7, 2009) (status of Crimestoppers Council of Broward County, as a private organization not subject to Ch. 119, F.S., is unaltered by its receipt of money from the Attorney General's Office). And compare *Inf. Op. to Gatz and Coley*, December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Ch. 119, F.S.); and *Inf. Op. to Cowin*, November 14, 1997 (fact that nonprofit medical center is built on property owned by the city would not in and of itself be determinative of whether the medical center's meetings and records are subject to open government requirements) with AGO 10-30 (subcommittee of a private economic development advisory council is subject to open government laws when county has delegated its authority to conduct public business).

The courts have relied on "two general sets of circumstances" in determining when a private entity is "acting on behalf of" a public agency and must therefore produce its records under Ch. 119, F.S. See *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002); *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17 (Fla. 1st DCA 2008) *review denied*, 4 So. 3d 1220 (Fla. 2009); and *County of Volusia v. Emergency Communications Network, Inc.*, No. 5D09-3417 (Fla. 5th DCA July 23, 2010). These circumstances are discussed below.

### 1. "Totality of factors" test

Recognizing that "the statute provides no clear criteria for determining when a private entity is 'acting on behalf of' a public agency," the Supreme Court adopted a "totality of factors" approach to use as a guide for evaluating whether a private entity is subject to Ch. 119, F.S. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992). Accord *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993) (private entities should look to the factors announced in *Schwab* to determine their possible agency status under Ch. 119); *Wells v. Aramark Food Service Corporation*, 888 So. 2d 134 (Fla. 4th DCA 2004). Cf. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 381 (Fla. 1999), noting that the "totality of factors" test presents a "mixed question of fact and law." Thus, when a public agency contracts with a private entity to provide goods or services to facilitate the agency's performance of its duties, the courts have considered the "totality of factors" in determining whether there

is a significant level of involvement by the public agency so as to subject the private entity to Ch. 119, F.S. See *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, *supra* at 974.

The factors listed by the Supreme Court in *Schwab* include the following:

- 1) the level of public funding;
- 2) commingling of funds;
- 3) whether the activity was conducted on publicly-owned property;
- 4) whether the contracted services are an integral part of the public agency's chosen decision-making process;
- 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- 6) the extent of the public agency's involvement with, regulation of, or control over the private entity;
- 7) whether the private entity was created by the public agency;
- 8) whether the public agency has a substantial financial interest in the private entity;
- 9) for whose benefit the private entity is functioning.

In explaining the totality test, the Court cited to several earlier district court opinions, including the Fourth District's decision in *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied*, 358 So. 2d 132 (Fla. 1978), that held that a private nonprofit volunteer fire department, which had been given stewardship over firefighting, which conducted its activities on county-owned property, and which was funded in part by public money, was an agency and its membership files, minutes of its meetings and charitable activities were subject to disclosure.

Thus, the application of the totality of factors test will often require an analysis of the statutes, ordinances or charter provisions which establish the function to be performed by the private entity as well as the contract, lease or other document between the governmental entity and the private organization. See, e.g., AGO 92-37 in which the Attorney General's Office, following a review of the Articles of Incorporation and other materials relating to the establishment and functions of the Tampa Bay Performing Arts Center, Inc., concluded that the center was an "agency" subject to the Public Records Act, noting that the center was governed by a board of trustees composed of a number of city and county officials or appointees of the mayor, utilized city property in carrying out its goals to benefit the public, and performed a governmental function. See also AGOs 97-27 (documents created or received by the Florida International Museum after the date of its purchase/lease/option agreement with city subject to disclosure under Ch. 119, F.S.), and 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., subject to Public Records Act). But see AGO 87-44 (records of a private nonprofit

corporation pertaining to a fund established for improvements to city parks were not public records since the corporation raised and disbursed only private funds and had not been delegated any governmental responsibilities or functions); *Inf. Op. to Michelson*, January 27, 1992 (telephone company supplying cellular phone services to city officials for city business is not an "agency" since company was not created by the city, did not perform a city function, and did not receive city funding except in payment for services rendered); and *Inf. Op. to Gaetz and Coley*, December 17, 2009 (private economic development organization, which is not acting on behalf of a public agency, is not subject to Ch. 119, F.S., merely because it encourages economic development in the county and is funded by a federal grant).

Under the "totality of factors" test, the courts have held the following businesses or organizations to be outside the scope of the Public Records Act:

Architectural firm providing architectural services associated with the construction of school facilities: *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, *supra*;

Manufacturer of breath analyzer machine used by law enforcement: *State v. Spalding*, 13 F.L.W. Supp. 627 (Fla. 15th Cir. Ct. February 28, 2006);

Private security force providing services on Walt Disney World property, including traffic control and accident reports: *Sipkema v. Reedy Creek Improvement District*, No. CI 96114 (Fla. 9th Cir. Ct. May 29, 1996), *per curiam affirmed*, 697 So. 2d 880 (Fla. 5th DCA 1997), *review dismissed*, 699 So. 2d 1375 (Fla. 1997);

Soft drink company cooperating with law enforcement in the testing of soda bottles during an investigation of a poisoning death: *Trepal v. State*, 704 So. 2d 498 (Fla. 1997).

## 2. Delegation test

While the mere act of contracting with a public agency is not sufficient to bring a private entity within the scope of the Public Records Act, there is a difference between a party contracting with a public agency to provide services to the agency and a contracting party which provides services *in place of* the public body. *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.*, 695 So. 2d 418 (Fla. 5th DCA 1997), *approved*, 729 So. 2d 373 (Fla. 1999); and *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002) (when a public entity delegates a statutorily authorized function to a private entity, the records generated by the private entity's performance of that duty become public records).

Stated another way, business records of entities which merely provide services for an agency to use (e.g., legal professional services) are probably not subject to the open government laws. *Memorial Hospital-West Volusia, Inc.*, *supra*. But, if the entity contracts to relieve the public body from the operation of a public obligation such as operating a jail or providing fire protection, the open government laws do apply. *Id.* And see *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 307 (Fla. 3d DCA



2001) (consortium of private businesses created to manage a massive renovation of an airport was an "agency" for purposes of the Public Records Act because it was created for and had no purpose other than to work on the airport contract; "when a private entity undertakes to provide a service otherwise provided by the government, the entity is bound by the Act, as the government would be").

Thus, in *Stanfield v. Salvation Army*, 695 So. 2d 501, 502-503 (Fla. 5th DCA 1997), the court ruled that the Salvation Army was subject to the Public Records Act when providing misdemeanor probation services pursuant to a contract with Marion County. See also *Putnam County Humane Society, Inc. v. Woodward*, 740 So. 2d 1238 (Fla. 5th DCA 1999) (where county humane society assumed the governmental function to investigate acts of animal abuse pursuant to statutory authority, the records created and maintained in connection with this function were governed by the Public Records Act).

Similarly, a private company under contract with a sheriff to provide medical services for inmates at the county jail must release its records relating to a settlement agreement with an inmate. Since these records would normally be subject to the Public Records Act if in the possession of the public agency, they are likewise covered by that law even though in the possession of the private corporation. *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204 (Fla. 2d DCA 1998), review denied, 727 So. 2d 909 (Fla. 1999). And see *Times Publishing Company v. Corrections Corporation of America*, No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), affirmed per curiam, 611 So. 2d 532 (Fla. 5th DCA 1993) (private corporation that operates and maintains county jail pursuant to contract with the county is "acting on behalf of" the county and must make available its records for the jail in accordance with Ch. 119); *Mae Volen Senior Center, Inc. v. Area Agency on Aging*, 978 So. 2d 191 (Fla. 4th DCA 2008), review denied, 1 So. 3d 172 (Fla. 2009) (private agencies on aging designated by the Department of Elder Affairs to coordinate and administer department programs and to provide services for the elderly within a planning and service area are subject to Public Records Law when considering any contracts requiring the expenditure of public funds).

In *Multimedia Holdings Corporation Inc. v. CRSPE, Inc.*, No. 03-CA-3474-G (Fla. 20th Cir. Ct. December 3, 2003), the circuit court required a consulting firm to disclose its time sheets and internal billing records generated pursuant to a subcontract with another firm (CRSPE) which had entered into a contract with a town to prepare a traffic study required by the Department of Transportation. Rejecting the subcontractor's argument that Ch. 119, F.S., did not apply to it because it was a subcontractor, not the contractor, the court found that the study was prepared and submitted jointly by both consultants; both firms had acted in place of the town in performing the tasks required by the department: "[T]he Public Records Act cannot be so easily circumvented simply by CRSPE delegating its responsibilities to yet another private entity." And see AGOs 08-66 (not-for-profit corporation contracting with city to carry out affordable housing responsibilities and screening applicant files for such housing is an agency within the scope of Ch. 119), 99-53 (while not generally applicable to homeowners associations, Ch. 119 applies to architectural review committee of a homeowners association which is required by county ordinance to review and approve applications for county building

permits as a prerequisite to consideration by the county building department), and 07-44 (property owners association, delegated performance of services otherwise performed by municipal services taxing unit, subject to Public Records Law when acting on behalf of the taxing unit).

The following are other examples of private entities that have been found to have been delegated a governmental function and thus subject to the Public Records Act in carrying out those functions:

**Employment search firm:** *Shevin v. Byron, Harless, Schaffer, Reid and Associates, supra*. Accord AGO 9 2-80 ( materials made or received by recruitment company in the course of its contract with a public agency to seek applicants and make recommendations to the board regarding the selection of an executive director, subject to Ch. 119).

**Engineering company providing ongoing engineering services to city:** *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17 ( Fla. 1st DCA 2008), *review denied*, 4 So. 3d 1220 (Fla. 2009)

**Towing company:** *Fox v. News-Press Publishing Company, Inc.*, 545 So. 2d 941 (Fla. 2d DCA 1989)

*But see Sipkema v. Reedy Creek Improvement District*, No. CI96114 (Fla. 9th Cir. Ct. May 29, 1996), *per curiam affirmed*, 697 So. 2d 880 (Fla. 5th DCA 1997), *review dismissed*, 699 So. 2d 1375 (Fla. 1997), in which the court, utilizing both the delegation and totality of factors tests, held that reports prepared by Walt Disney World's private security force regarding incidents on roads within the Disney property are not public records even though Disney contracted to provide some security services for a public entity, the Reedy Creek Improvement District.

### **c. Private company delegated authority to keep certain records**

In *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 494 (Fla. 2d DCA 1990), a private entity (the White Sox baseball organization) refused to allow access to draft lease documents and other records generated in connection with negotiations between the White Sox and the city for use of a municipal stadium. The court determined that both the White Sox and the city improperly attempted to circumvent the Public Records Act by agreeing to keep all negotiation documents confidential and in the custody of the White Sox. Noting the dangers that exist if private entities "are allowed to demand that they retain custody [and prevent inspection] of documents as a condition of doing business with a governmental body," the court ruled that both the city and the White Sox had violated Ch. 119, F.S.

Relying in part on the *White Sox* case, the court in *National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), held that National Collegiate Athletic Association records which were provided to a state university on the NCAA's secure custodial website for use by the university in preparing a response to possible NCAA sanctions were public records. Although the documents in the *White Sox* case had been modified

at the request of the city, the court found that to be "a distinction without a difference." *Id.* Holding that the records which were viewed and used by a public agency in carrying out its official business were public records, the court stated:

[T]he public records law can be enforced against any person who has custody of public records, whether that person is employed by the public agency creating or receiving the records or not. It makes no difference that the records in question are in the hands of a private party. If they are public records, they are subject to compelled disclosure under the law.

Thus, if a public agency has delegated its responsibility to maintain records necessary to perform its functions, such records will be deemed accessible to the public. *See, e.g., Harold v. Orange County*, 668 So. 2d 1010 (Fla. 5th DCA 1996) (where county hired a private company to be the construction manager on a county project and delegated to that company the responsibility of maintaining records necessary to show compliance with a "fairness in procurement or finance," the company's records for this purpose were public records); *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227 (Fla. 3d DCA 1998), *review denied*, 729 So. 2d 389 (Fla. 1999) (private company operating a campus bookstore pursuant to a contract with a state university is the custodian of public records made or received by the store in connection with university business); *WFTV, Inc. v. School Board of Palm Beach County*, No. CL 94-8549-AD (Fla. 15th Cir. Ct. March 29, 1995), *affirmed per curiam*, 675 So. 2d 945 (Fla. 4th DCA 1996) (school board which hired a marketing firm to conduct a survey, then reviewed and commented upon survey questionnaires designed by the firm but avoided taking possession of the documents, unlawfully refused a public records request for the documents); *Wisner v. City of Tampa Police Department*, 601 So. 2d 296, 298 (Fla. 2d DCA 1992) (city may not allow a private entity to maintain physical custody of polygraph charts used in police internal affairs investigation to circumvent Ch. 119, F.S.). *And see* AGO 98-54 (registration and disciplinary records stored in a computer database maintained by a national securities association which are used by a state agency in licensing and regulating securities dealers doing business in Florida are public records). *Cf. B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17, 20 (Fla. 1st DCA 2008), *review denied*, 4 So. 3d 1220 (Fla. 2009) ("Florida's policy of guaranteeing that public records are open for inspection contemplates the possibility that public records may sometimes be found in private hands.").

#### **d. Other statutory provisions**

##### **(1) Legislative appropriation**

Section 1.45(3)(e), F.S., states that all records of a nongovernmental agency, corporation, or person with respect to the receipt and expenditure of an appropriation made by the Legislature to that entity "shall be public records and shall be treated in the same manner as other public records are under general law." *Cf. AGO 96-43* (Astronauts Memorial Foundation, a nonprofit corporation, is subject to the Sunshine Law when performing those duties funded under the General Appropriations Act).

## **(2) Public funds used for dues**

Section 119.01(3), F.S., provides that if an agency spends public funds in payment of dues or membership contributions to a private entity, then the private entity's financial, business and membership records pertaining to the public agency are public records and subject to the provisions of s. 119.07, F.S.

## **(3) State contracts**

Section 287.058(1)(c), F.S., requires, with limited exceptions, that every procurement for contracted services by a state agency be evidenced by a written agreement containing a provision allowing unilateral cancellation by the agency for the contractor's refusal to allow public access to "all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt" from disclosure.

## **3. Judiciary**

### **a. Public Records Act inapplicable to judicial records**

Relying on separation of powers principles, the courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S. See, e.g., *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995) (the judiciary, as a coequal branch of government, is not an "agency" subject to supervision or control by another coequal branch of government) and *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Cf. s. 119.0714(1), F.S., stating that "[n]othing in this chapter shall be construed to exempt from [s. 119.07(1), F.S.] a public record that was made a part of a court file *and that is not specifically closed by order of court . . .*" (e.s.). And see *Tampa Television, Inc. v. Dugger*, 559 So. 2d 397 (Fla. 1st DCA 1990) (Legislature has recognized the distinction between documents sealed under court order and those not so sealed, and has provided for disclosure of the latter only).

However, the Florida Supreme Court has expressly recognized that "both civil and criminal proceedings in Florida are public events" and that it will "adhere to the well established common law right of access to court proceedings and records." *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988). See also *Russell v. Miami Herald Publishing Co.*, 570 So. 2d 979, 982 (Fla. 2d DCA 1990), in which the court stated: "[W]e recognize that the press has a general right to access of judicial records."

Although the judiciary is not an "agency" for purposes of Ch. 119, F.S., there is a constitutional right of access to judicial records established by Art. I, s. 24, of the Florida Constitution. This provision states that the public has a right of access to records in the judicial branch of government, except for those records exempted in the Constitution, records exempted by law in effect on July 1, 1993, records exempted pursuant to court rules in effect on November 3, 1992 [the date of adoption of the constitutional amendment], and records exempted by law in the future in accordance with the procedures specified in s. 24(c), Fla. Const. See *Amendments to the Florida Family Law Rules of Procedure*, 723 So. 2d 208, 209 (Fla. 1998), noting that under Art. I, s. 24, Fla.

Const., "any person has the right to inspect court files unless those files are specifically exempted from public inspection."

## **b. Public access to judicial branch records, Fla. R. Jud. Admin. 2.420**

### **(1) Scope of the rule**

In accordance with the directive in Art. I, s. 24, Fla. Const., access to records of the judicial branch is governed by Florida Rule of Judicial Administration 2.420 (formerly 2.051), entitled "Public Access to Judicial Branch Records." The rule, initially adopted in 1992, has been amended several times, including a recent amendment in 2010 which seeks "to balance the public's constitutional right to access to court records with the courts' responsibility to protect from public access court records that are confidential." See *In re Amendments to the Florida Rules of Judicial Administration 2.420 and the Florida Rules of Appellate Procedure*, 31 So. 3d 756 (Fla. 2010).

According to the Florida Supreme Court, rule 2.420 is "intended to reflect the judiciary's responsibility to perform both an administrative function and an adjudicatory function." *In re Amendments to the Florida Rules of Judicial Administration--Public Access to Judicial Records*, 608 So. 2d 472 (Fla. 1992). In its administrative role, the judiciary is a governmental entity expending public funds and employing government personnel. Thus, "records generated while courts are acting in an administrative capacity should be subject to the same standards that govern similar records of other branches of government." *Id.* at 472-473. See also *Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit*, 840 So. 2d 1008, 1016 (Fla. 2003) (when an individual complains to a chief circuit judge about judicial misconduct involving sexual harassment or sexually inappropriate behavior by a judge, the records made or received by the chief judge "constitute 'judicial records' subject to public disclosure absent an applicable exemption").

"Records of the judicial branch" are defined to include "all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity" and consist of "court records" and "administrative records." Fla. R. Jud. Admin. 2.420(b)(1).

The term "judicial branch" means "the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all other entities established by or operating under the authority of the supreme court or the chief justice." Fla. R. Jud. Admin. 2.420(b)(2).

The term "confidential," as applied to information contained within a record of the judicial branch, means that such information is exempt from the public right of access under Art. I, s. 24(a), Fla. Const., and may be released only to the persons or organizations designated by law, statute, or court order. Fla. R. Jud. Admin. 2.420(b)(4). The term "exempt," as applied to information contained in a court file, means that such information is confidential. *Id.* Confidential information includes information that is confidential under the rule or under a court order entered pursuant to the rule; however, to the extent reasonably practicable, the restriction of access to confidential information

shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential. *Id.*

In order to clarify the non-parties entitled to receive notice of certain filings under the rule, the term "affected non-party" is defined to mean "any non-party identified by name in a court records that contains confidential information pertaining to that non-party." Fla. R. Jud. Admin. 2.420(b)(5).

The text of Fla. R. Jud. Admin. 2.420, is included as Appendix E to this manual.

## **(2) Confidential judicial records**

In the absence of an exemption, judicial records are subject to disclosure. See *Tedesco v. State*, 807 So. 2d 804 (Fla. 4th DCA 2002), noting that the files in criminal cases are included within the definition of "judicial records" contained in Florida Rule of Judicial Administration 2.420(b), and that there is no exemption in the rule which would preclude release of the progress docket or the clerk's minutes from a criminal case. *Id.* And see *Friend v. Friend*, 866 So. 2d 116, 117 (Fla. 3d DCA 2004) (denial of access to records in dissolution of marriage case "may not be based solely upon the wishes of the parties to the litigation").

Rule 2.420(c) contains a list of confidential and exempt judicial branch records. Examples include trial and appellate court memoranda, complaints alleging misconduct against judges and other court personnel until probable cause is established, periodic evaluations implemented solely to assist judges in improving their performance, information (other than names and qualifications) about persons seeking to serve as unpaid volunteers unless made public by the court based upon a showing of materiality or good cause, and copies of arrest and search warrants until executed or until law enforcement determines that execution cannot be made. Fla. R. Jud. Admin. 2.420(c)(1) through (6).

Although rule 2.420(c)(1)-(6) lists specific confidential and exempt records, subdivision (c)(8) of the rule provides a general exemption from disclosure for records deemed to be confidential by court rule, Florida Statutes, prior Florida case law, and by rules of the Judicial Qualifications Commission. Thus, an executed search warrant could be withheld from disclosure pursuant to the statutory exemption for active criminal investigative material event though subdivision (c)(6) of the rule exempts only unexecuted search warrants. *Florida Publishing Company v. State*, 706 So. 2d 54 (Fla. 1st DCA 1998), review dismissed, 717 So. 2d 531 (Fla. 1998). *Accord State v. Buenoano*, 707 So. 2d 714, 718 (Fla. 1998) (documents that are exempt from public access under Ch. 119, F.S., are likewise exempt under rule 2.420). In addition, Fla. R. Jud. Admin. 2.420(c)(7) provides an exemption for "all records made confidential under the Florida and United States Constitutions and Florida and federal law."

Subdivision (c)(9) of rule 2.420 incorporates the holdings in *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113 (Fla. 1988), and *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982) by "establishing that confidentiality [of court records] may be required to protect the rights of defendants, litigants, or third parties; to further the administration of justice; or to otherwise promote a compelling governmental

interest." *Commentary, In re Amendments to Rule of Judicial Administration 2.051.-- Public Access to Judicial Records*, 651 So. 2d 1185, 1191 (Fla. 1995).

The degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect these interests. Fla. R. Jud. Admin. 2.420(c)(9)(B). *And see Smithwick v. Television 12 of Jacksonville, Inc.*, 730 So. 2d 795 (Fla. 1st DCA 1999) (trial court properly required defense counsel to return discovery documents once it realized that its initial order permitting removal of the documents from the court file had been entered in error because the requirements of rule 2.420 had not been met).

"The burden of proof . . . shall always be on the party seeking closure." *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 118 (Fla. 1988). "Our reasons for placing the burden on the party seeking closure and maintaining closure remains the same today as it did when we issued *Barron* in 1988; that is, the strong presumption of openness of court proceedings, and the fact that those challenging the closure order will generally have little or no knowledge of the specific grounds requiring closure." *Amendments to the Florida Family Law Rules of Procedure*, 853 So. 2d 303, 306 (Fla. 2003). *Commentary, supra* at 1191. *See In re: Guardianship of Cosio*, 841 So. 2d 693, 694 (Fla. 2d DCA 2003), in which the court stated that "[a]ccess to court records may be restricted to protect the interests of litigants only after a showing that the following three-prong test has been met: (1) the measure limiting or denying access (closure or sealing of records or both) is necessary to prevent a serious and imminent threat to the administration of justice; (2) no less restrictive alternative measures are available which would mitigate the danger; and (3) the measure being considered will in fact achieve the court's protective purpose."

In addition, rule 2.420(d)(1)(B) identifies 19 statutory exemptions that the Court refers to as "type 1" information. *In re Amendments to the Florida Rule of Judicial Administration 2.420 and the Florida Rules of Appellate Procedure, supra*. The clerk of court is required to designate and maintain as confidential "type 1" information and information listed under subdivision (c)(1) through (6). A person filing documents with the court is required to identify type I information by filing a "Notice of Confidential Information Within Court Filing," which the clerk must review and provide the filer with notice of the determination regarding the confidentiality of such information. Fla. R. Jud. Admin. 2.420(d)(2). Such information must be maintained as confidential for ten days, unless the filer has filed a motion to determine confidentiality pursuant to subdivision (d)(3). *Id.*

Information that may be confidential under subdivision (c)(7) or (c)(8), but is not automatically confidential, *i.e.*, it does not fall within one of the statutory exemptions listed in subdivision (d)(1)(B), is referred to as "type II" information. It is the duty of the filer to determine the confidentiality of the information. Fla. R. Jud. Admin. 2.420(d)(3). If he or she believes in good faith the information to be confidential, the filer must request that the information be maintained as confidential by filing a "Motion to Determine Confidentiality of Court Records." *Id.* Any interested party may also request that "type II" information be maintained as confidential by filing a motion. *Id.* *And see* Rule 2.420(d)(4) requiring a filer to give a non-party notice of certain filings involving confidential information relating to the non-party.

### **(3) Requests to determine confidentiality of court records**

#### **(a) Trial court records in noncriminal cases**

Requests to determine the confidentiality of "type II" information contained in trial court records in *noncriminal* cases must be made in the form of a written motion captioned "Motion to Determine Confidentiality of Court Records" and must identify the particular court records, or portions thereof, to be determined to be confidential, the basis for making such a determination, and the specific legal authority and any applicable legal standards for making such a determination. Fla. R. Jud. Admin. 2.420(e)(1). A motion must include a signed certification by the party making the request, or the party's attorney, that the motion is made in good faith and is supported by a sound factual and legal basis. *Id.* Information subject to the motion must be treated as confidential by the clerk pending the court's ruling on the motion; however, the case number, docket number or other number used by the clerk's office to identify the case file are not confidential. *Id.*

Unless specified in the motion that all parties agree to the relief requested, the court must hold a public hearing no later than 30 days after the filing of the motion, and may hold a hearing on an uncontested motion. Fla. R. Jud. Admin. 2.420(e)(2). Such hearing must be an open proceeding except that any person may request the court to conduct all or part of the hearing *in camera* to protect the interests set forth in subdivision (c) of the rule. *Id.* The court may, in its discretion, require prior public notice of the hearing and must issue a ruling on the motion within 30 days of the hearing. *Id.* An order granting the motion in whole or in part must state with specificity the grounds for determining the confidentiality of the records. Fla. R. Jud. Admin. 2.420(e)(3). Except as provided by law or court rule, notice of any order granting the motion, in whole or in part, must be given to the public as provided by the rule. Such notice is not required, however, for orders determining court records confidential under subdivision (c)(7) [records made confidential under the state or federal constitution or state or federal law], or (c)(8) [records deemed confidential by court rule, prior case law or rules of the Judicial Qualifications Commission]. Fla. R. Jud. Admin. 2.420(e)(4).

A nonparty may file a written motion to vacate a sealing order. Fla. R. Jud. Admin. 2.420(e)(5). The court must hold a hearing on any contested motion and may hold a hearing on uncontested motions; such hearing must be an open proceeding except that a party may request the court to conduct all or part of the hearing *in camera* to protect the interests set forth in subdivision (c)(9)(A) of the rule. *Id.*

Provision is made for the expedited consideration of and rulings on the motions as well as posting of orders. See Fla. R. Jud. Admin. 2.420(e)(2), (4), and (5). The rule also authorizes the imposition of sanctions in connection with bad-faith designations of confidential information or sealing motions or for the failure to comply with the requirements for filing confidential information. Fla. R. Jud. Admin. 2.420(e)(6).

#### **(b) Appellate court records in noncriminal cases**

Subdivision (g) of the rule addresses requests to determine the confidentiality of appellate court records in noncriminal cases and is modeled after subdivision (e). It



includes provisions relating to notice, posting of orders, and sanctions; however, unlike subdivision (e), subdivision (g) does not provide for holding a hearing to seal such records. Records of a lower tribunal determined by that court to be confidential must be treated as confidential during any review process. Subdivision (g), however, does not preclude review by an appellate court under Florida Rule of Appellate Procedure 9.100(d) or affect the standard of review by an appellate court of an order by the lower court determining a record to be confidential.

### **(c) Trial and appellate court records in criminal cases**

The procedures for a request to determine confidentiality in subdivisions (e) and (g), discussed *supra*, for noncriminal trial and appellate court records generally apply to requests to determine the confidentiality of court records in criminal cases. Subdivision (f)(3), however, establishes more restrictive provisions for records pertaining to a plea agreement, substantial assistance agreement, or that reveal the identity of a confidential informant or active criminal investigative information. Only certain procedures set forth in subdivisions (e) and (g) apply to subdivision (f)(3) records. See Fla. R. Jud. Admin. 2.420(f)(3)(B).

A subdivision (f)(3) motion must be based on a request for confidentiality under subdivisions (c)(9)(A)(i) (prevention of a serious or imminent threat to the administration of justice), (c)(9)(iii) (protection of a compelling governmental interest), (c)(9)(A)(v) (avoidance of a substantial injury to innocent third parties), or (c)(9)(A)(vii) (compliance with established public policy). The motion is treated as confidential and is indicated on the court docket by generic title only, pending a ruling on the motion or further order of the court. Fla. R. Jud. Admin. 2.420(f)(3). The information that is the subject of a subdivision (f)(3) motion must be treated as confidential by the clerk pending a ruling on the motion and a filing containing such information must be indicated on the docket in a manner that does not reveal the confidential nature of the information. Fla. R. Jud. Admin. 2.420(f)(3)(A). *And see* Fla. R. Jud. Admin. 2.420(f)(4) stating that subdivision (f) does not authorize the falsification of court records or progress dockets.

### **(4) Procedures for accessing judicial branch records under rule 2.420**

"Requests and responses to requests for access to records under this rule shall be made in a reasonable manner." Fla. R. Jud. Admin. 2.420(i). Requests must be in writing and directed to the custodian. *Id. See Morris Publishing Group, LLC v. State*, 13 So. 3d 120 (Fla. 1st DCA 2009), in which the court denied a Florida newspaper's records request for an audio tape related to a shooting since the request was made orally instead of in writing as required by the rule. In a commentary to the decision incorporating the written request provision, the Court cautioned that the "writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing." *Commentary, In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002).

A public records request "shall provide sufficient specificity to enable the custodian to identify the requested records. The reason for the request is not required to be

disclosed." Fla. R. Jud. Admin. 2.420(i)(1).

The custodian "is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request." *Commentary, In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002).

The custodian shall determine whether the requested records are subject to the rule, whether there are any exemptions, and the form in which the record is provided. Fla. R. Jud. Admin. 2.420(i)(2). If the request is denied, the custodian shall state in writing the basis for the denial. *Id.*

### **(5) Review of denial of access to administrative records**

Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus, or other appropriate relief. Fla. R. Jud. Admin. 2.420(h). *Cf. Mathis v. State*, 722 So. 2d 235, 236 (Fla. 2d D CA 1998) (petition for writ of mandamus "is the proper vehicle to seek review of the denial of access to judicial records"). Where a judge who has denied a request for access to records is the custodian, the action shall be filed in the appellate court having appellate jurisdiction to review the decisions of the judge denying access. Fla. R. Jud. Admin. 2.420(h)(1). Upon order issued by the appellate court, the judge denying access to records shall file a sealed copy of the requested records with the appellate court. *Id.* All other actions shall be filed in the circuit court where the denial of access occurred. Fla. R. Jud. Admin. 2.420(h)(2).

### **c. Electronic judicial records**

The Florida Supreme Court, in *Administrative Order of the Supreme Court 09-30* (<http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-30.pdf>), adopted statewide standards for electronic access to the courts. Recognizing that "the transition of Florida's courts from paper-based information management to systems that rely primarily on digital records represents a fundamental change in the internal operations of the courts," the Court stated that "care must be taken to ensure that this transformation is accomplished in a deliberate and responsible manner" as "these issues are not merely technical but are central to the future functioning of the courts and to relations between citizens and their government." *Id.*, quoting *In Re: Implementation of Report and Recommendations of the Committee on Privacy and Court Records*, 06-20 (Fla. June 30, 2006).

Administrative Order 09-30 provides for the establishment of a single statewide Internet portal for electronic access to and transmission of court records to and from all Florida courts. Section 4.1.18 provides that public access to electronically filed documents "must be provided in accordance with the judicial branch policy on access to court records" and comply with the requirements of the Americans with Disabilities Act, the federal law known as Section 508 of the Rehabilitation Act of 1973, as amended, which lists standards necessary to make electronic and information technology accessible to persons with disabilities, and the Florida Accessible Electronic and Information Technology Act, ss. 282.601-282.606, F.S. Section 4.1.15 requires a filer

who electronically files a document containing exempt information to indicate that the document contains confidential information by placing the notation "confidential" in the comments section. Documents that are exempt or claimed to be exempt from public access shall be processed pursuant to Rule 2.420. *Id.*

#### **d. Discovery material**

The Florida Supreme Court has ruled that there is no First Amendment right of access to unfiled discovery materials. *Palm Beach Newspapers v. Burk*, 504 So. 2d 378 (Fla. 1987) (discovery in criminal proceedings); and *Miami Herald Publishing Company v. Gridley*, 510 So. 2d 884 (Fla. 1987), *cert. denied*, 108 S.Ct. 1224 (1988) (civil discovery). *But see SCI Funeral Services of Florida, Inc. v. Light*, 811 So. 2d 796, 798 (Fla. 4th DCA 2002), noting that even though there is no constitutional right of access to prefiled discovery materials, "it does not necessarily follow that there is a constitutional right to *prevent* access to discovery." (emphasis supplied by the court).

Even though unfiled discovery material is not accessible under the First Amendment, it may be open to inspection under Ch. 119, F.S., if the document is a public record which is otherwise subject to disclosure under that law. *See, e.g., Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987), in which the court reversed a trial judge's ruling limiting inspection of police records produced in discovery to those materials which were made part of an open court file because "this conflicts with the express provisions of the Public Records Act." *Cf. Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32 (Fla. 1988), in which the Court noted that where pretrial discovery material developed for the prosecution of a criminal case had reached the status of a public record under Ch. 119, F.S., the material was subject to public inspection as required by that statute in the absence of a court order finding that release of the material would jeopardize the defendant's right to a fair trial. *See also Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010) (government not precluded from asserting applicable statutory exemptions to public records that have been disclosed during discovery to a criminal defendant). *And see Post-Newsweek Stations, Florida, Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992) (public's statutory right of access to pretrial discovery information in a criminal case must be balanced against a nonparty's constitutional right to privacy).

#### **e. Florida Bar**

"Given that The Florida Bar is 'an official arm of the court,' see R. Regulating Fla. Bar, Introduction, [the Florida Supreme] Court has previously rejected the Legislature's power to regulate which Florida Bar files were subject to public records law . . . ." *The Florida Bar v. Committee*, 916 So. 2d 741, 745 (Fla. 2005). *See also The Florida Bar, In re Advisory Opinion Concerning the Applicability of Ch. 119, Florida Statutes*, 398 So. 2d 446, 448 (Fla. 1981) (Ch. 119, F.S., does not apply to unauthorized practice of law investigative files maintained by the Bar). *Cf. Florida Board of Bar Examiners Re: Amendments to the Rules of the Supreme Court of Florida Relating to Admissions to the Bar*, 676 So. 2d 372 (Fla. 1996) (no merit to argument that under Art. I, s. 24, Fla. Const., all records in possession of Board of Bar Examiners should be open for

inspection by applicant and the public).

#### **f. Judicial Qualifications Commission and judicial nominating commissions**

Proceedings by or before the Judicial Qualifications Commission are confidential until formal charges against a justice or judge are filed by the Commission with the clerk of the Florida Supreme Court; upon a finding of probable cause and the filing of formal charges with the clerk, the charges and all further proceedings before the Commission are public. See Art. V, s. 12(a)(4), Fla. Const; *Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit*, 840 So. 2d 1008 (Fla. 2003).

With regard to judicial nominating commissions, Art. V, s. 11(d), Fla. Const., provides that "[e]xcept for deliberations of the . . . commissions, the proceedings of the commissions and their records shall be open to the public." See Inf. Op. to Frost, November 4, 1987, concluding that correspondence between a member of a judicial nominating commission and persons wishing to obtain an application for a vacant seat on a District Court of Appeal is a public record subject to disclosure. Accord Inf. Op. to Russell, August 2, 1991 (documents made or received by a judicial nominating commission in carrying out its duties are open to inspection).

However, records pertaining to voting, including vote sheets, ballots, and ballot tally sheets "are clearly part of the deliberation process" and, therefore, are not subject to public disclosure. *The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). In addition, personal notes of individual commission members made during the deliberation process are not subject to disclosure because they are mere "precursors" of governmental records, and thus fall outside the definition of "public record." *Id.*, citing to *Shevin v. Byron, Harless, Schaffer, Reid and Associates Inc.*, 379 So. 2d 633 (Fla. 1980).

#### **g. Jury records**

##### **(1) Grand jury**

Proceedings before a grand jury are secret; therefore, records prepared for use of the grand jury during the regular performance of its duties are not subject to s. 119.07(1), F.S. See *Buchanan v. Miami Herald Publishing Company*, 206 So. 2d 465 (Fla. 3d DCA 1968), *modified*, 230 So. 2d 9 (Fla. 1969) (grand jury proceedings are "absolutely privileged"); and *In re Grand Jury, Fall Term 1986*, 528 So. 2d 51 (Fla. 2d DCA 1988), affirming a trial court order barring public disclosure of motions filed in accordance with s. 90.528, F.S., to repress or expunge stemming from a grand jury presentment not accompanied by a true bill or indictment. See also AGO 90-48 (as an integral part of the grand jury proceeding to secure witnesses, grand jury subpoenas would fall under the "absolute privilege" of the grand jury and not be subject to disclosure under Ch. 119, F.S.).

Thus, a letter written by a city official to the grand jury is not subject to public inspection. AGO 73-177. Nor are the names and addresses of the members of the grand jury subject to public disclosure under s. 119.07(1), F.S., because this information is privileged as part of the grand jury proceedings. Inf. Op. to Alexander, September 8,

1995. However, the clerk of court is not authorized to redact the name of a grand jury foreperson or the acting foreperson from an indictment after it has been made public. AGO 99-09.

It is important to emphasize, however, that the exemption from disclosure for grand jury records does not apply to those records which were prepared by a public agency independent of a grand jury investigation. Thus, public records which are made or received by an agency in the performance of its official duties do not become confidential simply because they are subsequently viewed by the grand jury as part of its investigation. As the court stated in *In re Grand Jury Investigation, Spring Term 1988*, 543 So. 2d 757, 759 (Fla. 2d DCA 1989):

Nor can we allow the grand jury to become a sanctuary for records which are otherwise accessible to the public. The mere fact that documents have been presented to a grand jury does not, in and of itself, cloak them in a permanent state of secrecy.

Accordingly, a state attorney and sheriff must provide public access to investigative records regarding a judge that were compiled independently of and prior to a grand jury's investigation of the judge. *In re Grand Jury Investigation, Spring Term 1988, supra*. See also *In re Subpoena To Testify Before Grand Jury*, 864 F.2d 1559 (11th Cir. 1989) (trial court's authority to protect grand jury process enabled court to prevent disclosure of materials prepared for grand jury proceedings; however, court not empowered to prohibit disclosure of documents assembled independent of grand jury proceedings).

There are a number of statutes which relate to secrecy of grand jury proceedings. See ss. 905.24-905.28, F.S., and s. 905.395, F.S. (statewide grand jury). *But see Butterworth v. Smith*, 110 S.Ct. 1376 (1990) (provisions of s. 905.27, F.S., which prohibit "a grand juror . . . reporter . . . or any other person" appearing before a grand jury from ever disclosing testimony before the grand jury except pursuant to a court order were unconstitutional insofar as they prohibit a grand jury witness from disclosing his own testimony after the term of the grand jury has ended).

## **(2) Trial jury**

In *Keever v. Gilliam*, 886 So. 2d 263 (Fla. 1st DCA 2004), the appellate court ruled that the clerk of court was required to comply with appellant's public records request for names and addresses of *trial court* jurors empanelled in his trial. *Accord* AGO 05-61 (statute requiring Department of Highway Safety and Motor Vehicles to provide driver license information to courts for purposes of establishing jury selection lists does not operate to exempt from public disclosure jurors' names and addresses appearing on a jury list compiled by the clerk of court). *Cf. Sarasota Herald-Tribune v. State*, 916 So. 2d 904, 909 (Fla. 2d DCA 2005) (while "[t]here are unquestionably times when it might be necessary for a trial judge to impose media restrictions on the publication of juror information, . . ." trial court order prohibiting news media from publishing names and addresses of prospective or seated jurors in the high profile murder trial constituted a prior restraint on speech).

## **h. Sunshine in Litigation Act**

The Sunshine in Litigation Act, s. 69.081, F.S., provides, with limited exceptions, that no court shall enter an order or judgment which has the purpose or effect of concealing a public hazard or which has the purpose or effect of concealing any information which may be useful to members of the public in protecting themselves from injury which may result from a public hazard. See *Jones v. Goodyear Tire & Rubber Company*, 871 So. 2d 899 (Fla. 3d DCA 2003), *review denied*, 886 So. 2d 227 (Fla. 2004) (jury finding in favor of mechanic who was injured by an exploding tire established that the tire was a "public hazard" for purposes of the Sunshine in Litigation Act; thus, reversal of pretrial confidentiality order was required). See also *State v. American Tobacco Company*, No. CL 95 -1466-AH ( Fla. 15t h C ir. C t. J uly 28, 19 97) ( Sunshine i n Li tigation A ct i s constitutional).

Additionally, s. 69.081(8), F.S., provides that any portion of an agreement which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced. Settlement records must be maintained in compliance with Ch. 119, F.S. See *Inf. Op. to Barry*, June 24, 1998, citing to s. 69.081(8)(a), and stating that "a state agency may not enter into a settlement agreement or other contract which contains a provision authorizing the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file." However, this subsection does not apply to trade secrets protected under Ch. 688, F.S., proprietary confidential business information, or other information that is confidential under state or federal law. Section 69.081(8), F.S.

## **4. Legislature**

The Public Records Act does not apply to the legislative branch. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992) (definition of "agency" in the Public Records Act does not include the Legislature or its members). There is, however, a constitutional right of access to legislative records provided in Art. I, s. 24, Fla. Const., which provides that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body . . . ." This right of access specifically includes the legislative branch. Article I, s. 24(a), Fla. Const. The Legislature, however, may provide by general law for the exemption of records provided that such law must state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose of the law. Article I, s. 24(c), Fla. Const. Each house of the Legislature is authorized to adopt rules governing the enforcement of this section in relation to records of the legislative branch. *Id.* Any statutes providing limitations on access which were in effect on July 1, 1993, continue in force and apply to records of the legislative branch until repealed. Article I, s. 24(d), Fla. Const.

Section 11.0431(2), F.S., lists legislative records which are exempt from inspection and copying. The text of s. 11.0431, F.S., is set forth in Appendix F. *And see* s. 11.26(1), F.S. (legislative employees are forbidden from revealing to anyone outside the area of their direct responsibility the contents or nature of any request for services made

by any member of the Legislature except with the consent of the legislator making the request); and s. 15.07, F.S. (the journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon order of the Senate itself or some court of competent jurisdiction). *Cf. Media General Operation, Inc. v. Feeney*, 849 So. 2d 3, 6 ( Fla. 1st DCA 2003), in which the court rejected the argument that records containing telephone numbers for calls made by legislative employees in connection with official business could be redacted because disclosure of the numbers could result in "unreasonable consequences to the persons called"; however, under the circumstances of the case, employees could redact those portions of the records reflecting personal calls.

## **5. Governor and Cabinet**

The Governor and Cabinet have duties which derive from both the Constitution and the Legislature. Because of separation of powers principles, the legislatively created Public Records Act does not apply to records gathered in the course of carrying out a specific duty or function which has been assigned to the Governor and Cabinet by the Constitution rather than by statute. See AGO 86-50, stating that materials collected by the Parole and Probation Commission pursuant to direction of the Governor and Cabinet for pardons or other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to Ch. 119, F.S.

The Public Records Act, however, does apply to the Governor and Cabinet when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the "dominion and control" of the Legislature.

In addition, Art. I, s. 24, Fla. Const., establishes a constitutional right of access by providing that "every person" shall have a right of access to public records of the executive branch and of "each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution" except as otherwise provided in this section or specifically made confidential in the Constitution.

## **6. Commissions created by the Constitution**

A board or commission created by the Constitution is not subject to Ch. 119, F.S., inspection requirements when such board or commission is carrying out its constitutionally prescribed duties. See AGO 86-50 (Ch. 119, F.S., is not applicable to materials gathered by the Parole and Probation Commission regarding an application for clemency since the clemency power is exclusively constitutional). *Cf. Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977) (judicial nominating commissions are not subject to s. 286.011, F.S.), and AGO 77-65 (Ch. 120, F.S., is inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const., because the commission is authorized in that section to adopt its own rules of procedure).

Accordingly, the Florida Supreme Court has ruled that the Public Records Act does not apply to the clemency investigative files and reports produced by the Parole

Commission on behalf of the Governor and Cabinet relating to the granting of clemency. Release of such materials is governed by the Rules of Executive Clemency adopted by the Governor and Cabinet, sitting as the clemency board. *Parole Commission v. Lockett*, 620 So. 2d 153 (Fla. 1993). *Accord Jennings v. State*, 626 So. 2d 1324 (Fla. 1993).

There is, however, a difference between the status of a commission created by the Constitution which exercises constitutional duties and a commission whose creation is merely authorized by the Constitution and whose duties are established by law. While the former is not subject to the Public Records Act, it has been held that a commission performing duties assigned to it by the Legislature must comply with the open government laws. See *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission, which Art. IV, s. 8(c), Fla. Const., recognizes may be created by law, is subject to s. 286.011, F.S., in carrying out its statutory duties and responsibilities relating to parole.

Moreover, Art. I, s. 24, Fla. Const., provides a constitutional right of access for public records of each branch of government, and "each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution." The only exceptions to the right of access are those records exempted pursuant to s. 24 or specifically made confidential by the Constitution. Article I, s. 24(a), Fla. Const. See *King v. State*, 840 So. 2d 1047 (Fla. 2003) (clemency records exempt pursuant to s. 14.28, F.S., providing that records made or received by any state entity pursuant to a Board of Executive Clemency investigation are not subject to public disclosure).

## **D. WHAT KINDS OF AGENCY RECORDS ARE SUBJECT TO THE PUBLIC RECORDS ACT?**

### **1. Computer records**

#### **a. Computer records are public records**

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet . . ." *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983).

Numerous Attorney General Opinions have cited *Seigle* for the principle that the Public Records Act includes computer records as well as paper documents, tape recordings, and other more tangible materials. See, e.g., AGO 98-54 (application and disciplinary reports maintained in a computer system operated by a national securities dealers association which are received electronically by state agency for use in licensing and regulating securities dealers doing business in Florida are public records subject to Ch. 119); AGO 91-61 (agency must provide copy of computer disk in response to Ch. 119 request); and AGO 85-03 (computer tape subject to disclosure).

Thus, information such as electronic calendars, databases, and word processing files stored in agency computers, can all constitute public records because records



made or received in the course of official business and intended to perpetuate, communicate or formalize knowledge of some type, fall within the scope of Ch. 119, F.S. AGO 89-39. Compare AGO 85-87 (to the extent that "machine-readable intermediate files" may be intended to "communicate" knowledge, any such communication takes place completely within the data processing equipment and in such form as to render any inspection pursuant to Ch. 119, F.S., unintelligible and, except perhaps to the computer itself, meaningless; therefore, these files are analogous to notes used to prepare some other documentary material, and are not public records).

Moreover, the definition of "public records" specifically includes "data processing software" and establishes that a record made or received in connection with official business is a public record, regardless of physical form, characteristics, "or means of transmission." See s. 119.011(12), F.S. "Providing access to public records is a duty of each agency." Section 119.01(1), F.S. "Automation of public records must not erode the right of access to those records." Section 119.01(2)(a), F.S. "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." *Id.* Cf. s. 287.042(3)(h), F.S., providing for the Department of State, in consultation with the Agency Chief Information Officers Council, to develop procedures to be used by state agencies when procuring information technology commodities and contractual services to ensure compliance with public records requirements and records retention and archiving requirements.

Accordingly, electronic public records are governed by the same rule as written documents and other public records--the records are subject to public inspection unless a statutory exemption exists which removes the records from disclosure. See *National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (public records law is not limited to paper documents but applies to documents that exist only in digital form). Cf. AGO 90-04, stating that a county official is not authorized to assign the county's right to a public record (a computer program developed by a former employee while he was working for the county) as part of a settlement compromising a lawsuit against the county.

#### **b. "E-Mail"**

"E-mail" messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of an exemption. AGO 96-34. Such messages are subject to the statutory restrictions on destruction of public records. See s. 257.36(6), F.S., stating that a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services (division) of the Department of State; and s. 119.021(2)(b), F.S., providing that each agency shall comply with rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division. *And see In re Amendments to Rule of Judicial Administration 2.051.-- Public Access to Judicial Records*, 651 So. 2d 1185, 1186 (Fla. 1995) (definition of "judicial records" [now in Rule 2.420 of Fla. R. Jud. Admin.] "includes information transmitted by

an e-mail system").

The nature of information--that is, that it is electronically generated and transferred--has been determined not to alter its character as a public record under the Public Records Act. AGO 01-20. Thus, the e-mail communication of actual background information and position papers from one official to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. *Id.* Similarly, e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or "blind" recipients and their e-mail addresses. AGO 07-14.

### **(1) Personal e-mail**

The Florida Supreme Court has ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage. *State v. City of Clearwater*, 863 So. 2d 149 (Fla. 2003). "Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' . . . private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer." *Id.* at 154. The Court cautioned, however, that the case before it did not involve e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." *Id.* at 151 n.2. *Cf. Bent v. State*, No. 4 D10-2726 (Fla. 4th DCA filed September 29, 2010) (recordings of personal telephone calls between minors in jail awaiting trial and third parties made by sheriff's office are not public records when contents of the phone calls do not involve criminal activity or a security breach). *Compare Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (personal flight log of pilots paid by county which are required as part of pilot's administrative duties are distinguishable from personal e-mails in *City of Clearwater* case and are subject to disclosure). *Cf. Grapski v. Machen*, Case No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), *affirmed per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007) (spam or bulk mail received by a public agency does not necessarily constitute a public record).

### **(2) E-mail address public records disclosure statement**

Section 668.6076, F.S., requires that any agency as defined in s. 119.011(1), F.S., or legislative entity that operates a website and uses electronic mail must post the following statement in a conspicuous location 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.

## **c. Facebook and Text Messages**

### **(1) Facebook**

The Attorney General's Office has stated that the placement of material on a city's Facebook page presumably would be in connection with the transaction of official business and thus subject to Ch. 119, F.S., although in any given instance, the determination would have to be made based upon the definition of "public record" contained in s. 119.11, F.S. AGO 09-19. To the extent that the information on the city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established by law. *Id.*

### **(2) Text Messages**

While the Attorney General's Office is not aware of any court cases ruling on whether text messages are public records, in March 2010, the Attorney General wrote a letter to the Department of State (which is statutorily charged with development of public records retention schedules) and said that the "same rules that apply to e-mail should be considered for electronic communications including Blackberry PINS, SMS communications (text messaging, MMS communications (multimedia content), and instant messaging conducted by government agencies." (See [http://myfloridalegal.com/webfilesnsf/WF/MRAY-83MJ8D/\\$file/BrowningLetter.pdf](http://myfloridalegal.com/webfilesnsf/WF/MRAY-83MJ8D/$file/BrowningLetter.pdf)). In response, the department revised its records retention schedule to note that text messages may be public records and that retention of text messages could be required depending upon the content of those texts. (See General Records Schedule GS1-SL for State and Local Government Agencies, V., Electronic Records, Electronic Communications, and Transitory Messages).

## **d. Formatting issues**

Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to Ch. 119, F.S., a copy of any public record in that system which is not exempted by law from public disclosure. Section 119.01(2)(f), F.S. 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 which shall be in accordance with Ch. 119, F.S. *Id.* Thus, a custodian of public records must, if asked for a copy of a computer software disk used by an agency, provide a copy of the disk in its original format; a typed transcript would not satisfy the requirements of s. 119.07(1), F.S. AGO 91-61. *Cf.* AGO 06-30, stating that an agency may respond to a public records request requiring the production of thousands of documents by composing a static web page where the responsive public documents are posted for viewing if the requesting party agrees to the procedure and agrees to pay the administrative costs, in lieu of copying the documents at a much greater cost.

However, an agency is not generally required to reformat its records to meet a requestor's particular needs. As stated in *Seigle v. Barry, supra*, the intent of Ch. 119, F.S., is "to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers." 422 So. 2d at 66. Thus, in AGO 97-39, the Attorney General's Office concluded that a school district

was not required to furnish electronic public records in an electronic format other than the standard format routinely maintained by the district.

Despite the general rule, however, the *Seigle* court recognized that an agency may be required to provide access through a specially designed program, prepared by or at the expense of the requestor, where:

- 1) available programs do not access *all* of the public records stored in the computer's data banks; or
- 2) 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 form 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. 422 So. 2d at 66-67.

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 that is not routinely used by the agency, or if it elects to compile information that is 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), F.S. (authorizing imposition of a special service charge if extensive information technology resources or labor are required). Section 119.01(2)(f), F.S.

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. Section 119.01(2)(b), F.S. 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 that agency, including public records that are on-line or stored in an electronic recordkeeping system used by the agency. Section 119.01(2)(c), F.S. *And see* s. 119.01(2)(a), F.S., stating that the "[a]utomation 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."

The importance of ensuring public access to computer records is recognized by statute and in the electronic recordkeeping rules of the Division of Library and Information Services of the Department of State. Section 287.042(3)(h), F.S., requires the Department of Management Services to develop, in consultation with the Agency Chief Information Officers Council, procedures to be used by state agencies when procuring information technology commodities and contractual services to ensure compliance with public-records requirements and records-retention and archiving requirements. See s. 257.14, F.S., establishing rulemaking authority of the Division

regarding records management. Rule 1B-26.003(6)(g)3., F.A.C., provides that each agency shall "[e]nsure that agency electronic recordkeeping systems meet state requirements for public access to records in accordance with Chapter 119, F.S." *Cf.* Inf. Op. to Moore, October 19, 1993, noting that an agency considering the acquisition of computer software should be responsive to the need for preserving public access to the information through use of the computer's software and that "[t]he design and development of the software, therefore, should ensure that the system has the capability of redacting confidential or exempt information when a public records request is made."

#### **e. Remote access**

Section 119.07(2)(a), F.S., states that "[a]s an additional means of inspecting or copying public records," a custodian may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed. Thus, an agency is authorized but not required to permit remote electronic access to public records. *And see* s. 119.01(2)(e), F.S., establishing that "[p]roviding access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible," and that agencies providing remote access should do so "in the most cost-effective and efficient manner available to the agency providing the information." *Cf. Rea v. Sansbury*, 504 So. 2d 1315, 1317-1318 (Fla. 4th DCA 1987), *review denied*, 513 So. 2d 1063 (Fla. 1987) (while county possesses statutory authority to facilitate inspection of public records by electronic means, this "does not mean that every means adopted by the county to facilitate the work of county employees ipso facto requires that the public be allowed to participate therein").

Section 119.07(2)(b), F.S., requires the custodian to provide safeguards to protect the contents of the public records from unauthorized electronic access or alteration and to prevent the disclosure or modification of those portions of the records which are exempt from disclosure.

Unless otherwise required by law, the custodian 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. However, fees for remote electronic access provided to the general public must be in accordance with the provisions of s. 119.07, F.S. Section 119.07(2)(c), F.S.

#### **f. Security exemptions**

Risk analysis in information relative to security threats to data, information, and information technology resources of an agency is confidential and exempt. Section 282.318(4)(c), F.S. *And see* s. 282.0041(1), F.S., defining "agency" for purposes of Ch. 282, F.S., as having the same meaning as in s. 216.011(1)(qq), F.S. Internal policies and procedures to assure the security of the data and information technology resources which, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data, information, or information technology resources are confidential and exempt. Section 282.318(4)(d), F.S. Results of periodic audits and evaluations of a

security program for an agency's data and information technology resources are confidential and exempt. Section 282.318(4)(f), F.S. Risk analysis information, internal policies and procedures and results of periodic audits and evaluations made confidential by the above subsections shall be available to the Auditor General and the Agency for Enterprise Information Technology for performing post-auditing duties. Section 282.318(4)(c), (d) and (f), F.S.

#### **g. Software created by an agency**

##### **(1) Copyrighted agency-created software**

Section 119.084(2), F.S., authorizes agencies to hold and enforce copyrights for data processing software created by the agency. The agency may sell or license the copyrighted software and may establish a license fee for its use. The prices or fees for the sale or licensing of the copyrighted software may be based on market considerations.

However, the price or fee for providing agency-created and copyrighted data processing software to an individual solely for application to data or information maintained or generated by the agency that created the software must be limited to the fees prescribed in s. 119.07(4), F.S. Thus, while s. 119.084, F.S., allows public agencies to copyright software which they have created and to charge a fee based on market considerations, if the public must use the software in order to access agency public records, the agency must charge the fee provided in s. 119.07(4), F.S., and not the market-based fee.

##### **(2) "Sensitive" agency-created software**

Agency-produced data processing software which is sensitive is exempt from disclosure. Section 119.071(1)(f), F.S. Section 119.011(13), F.S., defines the term "sensitive" to mean "only those portions of [agency-produced] data processing software, including the specifications and documentation" which are used to collect, process, store and retrieve exempt information, financial management information such as payroll and accounting records, or to control and direct access authorization and security measures for automated systems. See AGO 90-104, applying the exemption to agency-produced software used to process voter registration information.

#### **h. Trade secret exemptions**

The Legislature has created an exemption for data processing software which has been obtained by an agency under a licensing agreement prohibiting its disclosure and which is a trade secret as defined in s. 812.081, F.S. Section 119.071(1)(f), F.S. In order for the exemption to apply, two conditions must be present: The licensing agreement must prohibit disclosure of the software, and the software must meet the statutory definition of "trade secret" found in s. 812.081, F.S. See AGOs 90-104 and 90-102.

Section 815.04(3)(a), F.S., provides that data, programs, or supporting documentation which is a trade secret as defined in s. 812.081, F.S., and resides or

exists internal or external to a computer, computer system, or computer system network held by an agency is confidential and exempt from s. 119.07(1), F.S. This exemption applies to trade secrets marked as confidential and sent via electronic mail to an agency. *Sepro Corporation v. Department of Environmental Protection*, 839 So. 2d 781, 785 (Fla. 1st DCA 2003), *review denied sub nom.*, *Crist v. Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005).

## **2. Election records**

### **a. Ballots**

Election records are generally open to public inspection. An individual or group is entitled to inspect the ballots and may take notes regarding the number of votes cast. AGO 93-48. *See also Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), *review denied*, 919 So. 2d 436 (Fla. 2005) (voted ballots are public records because they have "memorialized the act of voting").

Section 119.07(5), F.S., prohibits any person other than the supervisor of elections or the supervisor's employees from touching the ballots. *And see* s. 101.572, F.S. (no persons other than the supervisor, supervisor's employees, or the county canvassing board shall handle any official ballot or ballot card). However, this restriction does not prohibit the supervisor from producing copies of optically scanned ballots which were cast in an election in response to a public records request. AGO 04-11. *And see* AGO 01-37 (supervisor of elections required to segregate overvote and undervote ballots by use of the county's optical scanning equipment pursuant to a public records request even though the overvote and undervote ballots had already been segregated manually, provided that the requestor pay for the costs of the mechanical segregation in accordance with the Public Records Act).

### **b. Voter registration and voter records**

Each supervisor of elections shall maintain for at least two years and make available for public inspection and copying, all records concerning implementation of registration list maintenance programs and activities conducted pursuant to ss. 98.065 and 98.075, F.S. Section 98.045(3), F.S. The records must include lists of the name and address of each person to whom a notice was sent and information as to whether each such person responded to the mailing, but may not include any information that is confidential or exempt from public records requirements under the Election Code. *Id.*

Section 97.0585, F.S., states that the following information is confidential and exempt from public disclosure requirements and may be used only for purposes of voter registration: declinations to register to vote; information relating to the place where a person registered to vote or updated a voter registration; the social security number, driver's license number, and the Florida identification number of a voter registration applicant or voter. The signature of a voter registration applicant or a voter is exempt from copying requirements. *Id.* *And see* s. 741.465(2), F.S., providing an exemption for the names, addresses, and telephone numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence contained in voter registration and voting records. In addition, s. 97.0585(3), F.S., provides that the names, addresses,

and telephone numbers of stalkers or aggravated stalkers victims are exempt from disclosure in the same manner as such information of participants in the Address Confidentiality Program for Victims of Domestic Violence under s. 741.465, F.S., is exempt, provided that the stalking victim has filed a sworn statement of stalking with the Attorney General's Office and otherwise complies with the procedures in ss. 741.401-741.409, F.S.

Verified petition cards submitted by a *candidate* qualifying by the alternative method, however, are not registration records subject to restrictions on inspection and copying under the Florida Election Code. AGO 02-63. See *also* AGO 02-67 (designation that a change of address has occurred does not make a candidate petition card a voter registration record). Compare AGO 04-18, concluding that the supervisor of elections must maintain the confidentiality of personal information (home address, telephone number) for certain officers and employees which appears in petitions or campaign papers if the affected employee or officer or his or her employing agency has filed a written request for confidentiality to the supervisor as authorized in s. 119.07(3)(i)4., F.S. [see now s. 119.071(4)(d)2., F.S.].

### **3. Financial records**

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. See AGO 96-96 (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements).

#### **a. Audit reports**

##### **(1) Auditor General audits**

The audit report prepared by the Auditor General is a public record once finalized. Section 11.45(4)(c), F.S. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. *Id.* And see AGO 79-75 ("the term 'audit work papers and notes' should be construed narrowly and limited to such 'raw data' as is commonly considered to constitute the work papers of an accountant").

At the conclusion of the audit, the Auditor General provides the head of the agency being audited with a list of the adverse findings so that the agency head may explain or rebut them before the report is finalized. Section 11.45(4)(d), F.S. This list of adverse audit findings is a public record. AGO 79-75.

##### **(2) Local government audits**

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. Section 119.0713(3), F.S. The audit becomes final when the audit report is presented to the unit of local government; until the audit becomes final, the audit workpapers and notes



related to such audit report are confidential. *Id.*

Thus, a draft audit report of a county legal department prepared by the clerk of court, acting in her capacity as county auditor, did not become subject to disclosure when the clerk submitted copies of her draft report to the county administrator for review and response. *Nicolai v. Baldwin*, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998). According to the exemption, the report would become "final," and hence subject to disclosure, when presented to the county commission. *Id.*

The term "internal auditor" is not defined for purposes of this exemption. However, the term would appear to encompass an official within county government who is responsible under the county code for conducting an audit. A GO 99-07. Thus, the exemption would apply to the Miami-Dade Inspector General when conducting audits of county contracts pursuant to the county code. *Id. Compare* AGO 04-33 (exemption does not apply to audit of guardianship files prepared by clerk of court because that audit "is not an internal audit performed by or on behalf of any of the specified units of local government").

### **(3) State agency inspector general audits**

Section 20.055, F.S., requires each state agency to appoint an inspector general to conduct audits of the agency and prepare audit reports of the findings. Such audit reports and workpapers are public records to the extent that they do not include information which has been made confidential and exempt from disclosure. Section 20.055(5)(b), F.S. *Compare* s. D.4.b.(4), *infra*, relating to whistle-blower investigations.

#### **b. Bids**

Section 119.071(1)(b)1.a, F.S., provides an exemption for "sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals" until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a), F.S., or within 10 days after bid or proposal opening, whichever is earlier. *And see* s. 119.071(1)(b)1. b. , F.S., providing a temporary exemption 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; s. 119.071(1)(b)2.a., F.S., providing a temporary exemption for a competitive sealed reply in response to an invitation to negotiate, as defined in s. 287.012, F.S.; and s. 119.071(1)(b)2.b., F.S., providing a temporary exemption 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 as provided in the exemption.

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 disclosure requirements. Section 119.071(1)(c), F.S. *See also* s. 119.0713(4), F.S., providing a limited exemption for materials used by municipal utilities to prepare bids.

### **c. Budgets**

Budgets and working papers used to prepare them are normally subject to inspection. *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976); and *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157*, 298 So. 2d 478 (Fla. 1st DCA 1974). *Accord* Inf. Op. to Pietrodangelo, Nov. 29, 1972 (financial operating budget of a athletic department of state university constitutes a public record). *Cf. News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), holding that the preponderant interest in allowing public participation in the budget process justified the inclusion of an agency's internal budget committee within the provisions of the Government in the Sunshine Law.

The exemption afforded by s. 447.605(3), F.S., for work products developed by the public employer in preparation for collective bargaining negotiations does not remove the working papers used in preparing an agency budget from disclosure. *Warden v. Bennett, supra*. See also AGO 92-56 (budget of a public hospital would not, in and of itself, appear to constitute either a trade secret or marketing plan for purposes of a statutory exemption for documents revealing a hospital's marketing plan or trade secrets).

### **d. Economic development records**

#### **(1) Convention center booking business records**

Booking business records of a public convention center, sports facility, or auditorium are exempt from public disclosure. Section 255.047(2), F.S. The statute defines "booking business records" to include "client calendars, client lists, exhibitor lists, and marketing files." Section 255.047(1)(a), F.S. The term does not include "contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event." *Id.*

#### **(2) Business location or expansion plans**

Upon written request from a private entity, information held by an economic development agency concerning the plans, intentions, or interests of such entity to locate or expand its business activities in Florida is confidential and exempt from disclosure for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first. Section 288.075(2)(a), F.S. Confidentiality may be extended for up to an additional 12 months upon the written request of the private entity if the agency finds that the private entity is still actively considering locating or expanding its business activities in Florida. Section 288.075(2)(b), F.S. A public officer or employee may not enter into a binding agreement with an entity who has requested confidentiality of the information under this subsection until 90 days after the information is made public unless: 1. The public officer or employee is acting in an official capacity; 2. The agreement does not accrue to the personal benefit of such public officer or employee;

and 3. In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project. Section 288.075(2)(c), F.S.

Development plans, financial records, financial commitment letters and draft memoranda of understanding between a Florida city and a company that is interested in locating its business activities in the city and developing a large project there would appear to be "records which contain or would provide information concerning plans, intentions, or interests of such private corporation . . . to locate, relocate, or expand any of its business activities" in Florida. AGO 04-19. However, the burden is on the economic development agency "to carefully and in good faith distinguish between those documents clearly covered by the exemption and those not covered." *Id.*

A written request for confidentiality under s. 288.075(2), F.S., may constitute or contain information required to be held confidential under that statute; however, such a determination must be made by the custodian on a case-by-case basis as to whether a particular record or portion of a record falls within the scope of the exemption. AGO 07-15. The section, however, may be cited by the records custodian as statutory authority for withholding information from public inspection and copying under the Public Records Law without violating the required confidentiality provisions of the statute. *Id.*

Trade secrets, as defined in s. 812.081, F.S., contained in the records held by an economic development agency are confidential and exempt from disclosure. Section 288.075(3), F.S. *Cf.* AGO 80-78 (county industrial development authority permitted to withhold access only to those records "clearly falling" within the exemption provided in s. 288.075; "policy considerations" do not justify nondisclosure of public records).

Proprietary confidential business information held by an economic development agency is confidential and exempt until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information. Section 288.075(4), F.S. Federal employer identification numbers, unemployment compensation account numbers, or Florida sales tax registration numbers held by an economic development agency are confidential and exempt. Section 288.075(5), F.S. In addition, section 288.075(6), F.S., makes certain other information held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses confidential and exempt for a period not to exceed the duration of the incentive agreement, including an agreement authorizing a tax refund or tax credit, or upon termination of the incentive agreement.

The term "economic development agency" means the state Office of Tourism, Trade, and Economic Development, an industrial development authority, Space Florida, the public economic development agency of a county or municipality, or a research and development authority. Also included are the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the related responsibilities, if the county or municipality does not have a public economic development agency. The term also includes private persons or agencies authorized by the state, a county or a municipality to promote the general business interests of the state or that municipality or county. Section 288.075(1)(a), F.S. *Cf.* s. 288.9551, F.S. (Scripps Florida Funding Corporation).

### **(3) Tourism promotion records**

There are several statutes which exempt certain information obtained or held by state or local tourism agencies. For example, s. 125.0104(9)(d)1., F.S., exempts information given to a county tourism promotion agency, which, if released, would reveal the identity of those who provide information in response to a sales promotion, advertisement, or research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data.

Section 125.0104(9)(d)2., F.S., provides an exemption for the following records when held by a county tourism promotion agency: booking business records, as defined in s. 255.047, F.S.; a trade secret as defined in s. 812.081, F.S.; trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under cited federal law. See also ss. 288.1224(7) and 288.1226(8), F.S. (confidentiality of certain data submitted as part of marketing or advertising research projects undertaken by state tourism agencies).

#### **e. Personal financial records**

In the absence of statutory exemption, financial information prepared or received by an agency is usually subject to Ch. 119, F.S. See *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by housing finance authority members as part of the authority's application to organize a bank are subject to disclosure).

For example, county records of payments made by individuals for waste collection services are public records. A GO 88-57. See also A GO 04-16 (financial documents contained in licensing file); A GO 92-09 (customer delinquency information held by a utilities commission is subject to disclosure); and Inf. Op. to Lovelace, April 3, 1992 (records identifying mortgage recipients held by a bank acting as agent of a housing finance authority in granting mortgages funded by the authority are public records). Cf. A GO 73-278 (reports submitted to agency in connection with permit application open to inspection unless submitted by a consumer reporting agency whose reports are subject to nondisclosure provisions in federal law; in that event, reports are subject to public inspection only as authorized in federal law).

There are some specific exemptions, however, that are applicable to certain payment records or information. Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from public disclosure. Section 119.071(5)(b), F.S. See also s. 119.0714(1)(j), F.S. (bank account numbers and debit, charge, and credit card numbers held in court records are exempt as provided in s. 119.071[5][b]); and s. 119.0714(2)(a) and (e)1., F.S. (until January 1, 2012, if 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; after that date no request for redaction is required to keep such records confidential and exempt as provided in s. 119.071[5][b], F.S.). And see s.

119.0714(3)(b), F.S., providing that if 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 the holder's attorney or legal guardian; however, if such record is in electronic format, on or after January 1, 2011, the county recorder must use his or her best effort, to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without a request for redaction. The holder of 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 bank account, debit, charge, or credit card number contained in that official record. Section 119.0714(3)(c), F.S.

Health or property insurance information furnished by an applicant for or participant in federal, state, or local housing assistance programs is confidential. Section 119.071(5)(f), F.S. *And see* s. 717.117(8), F.S. (property identifiers contained in unclaimed property reports held by the Department of Financial Services are confidential); and s. 624.23, F.S. (personal financial information of a consumer held by the Department of Financial Services or the Office of Insurance Regulation, relating to a consumer's complaint or inquiry is confidential).

Section 338.155(6), F.S., provides an exemption for personal identifying information obtained by the Department of Transportation, a county, or an expressway authority relating to payment of tolls by credit card, charge card, or check. *And see* s. 414.295(1), F.S. (personal identifying information of a temporary cash assistance program participant is confidential).

#### **f. Security interests**

Records regarding ownership of, or security interests in, registered public obligations are not open to inspection. Section 279.11, F.S.

#### **g. Taxpayer records**

There are a number of statutes providing for confidentiality of taxpayer records held by the Department of Revenue. Unless otherwise specified by law, Florida taxpayers have the right to have tax information kept confidential. Section 213.015(9), F.S. *See, e.g.,* s. 213.053(2)(a), F.S. (all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and letters of technical advice, is confidential except for official purposes and exempt from s. 119.07[1], F.S.); s. 213.21(3), F.S. (records of compromises of taxpayer liability not subject to disclosure); and s. 213.27(6), F.S. (confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from public disclosure and such debt collection or auditing agencies are bound by the same confidentiality requirements as the department).

In light of the position taken by the Department of Revenue that its form entitled "Original Application for Ad Valorem Tax Exemption" constitutes a "return," such form should be treated as a "return" that is confidential pursuant to s. 193.074, F.S. AGO 05-04. *Accord* AGO 95-07. *And see NYT Management Services, Inc. v. Florida Department of Revenue*, Case No. 2006-CA-0896 (Fla. 2d Cir. Ct. April 25, 2006) (declarations or written statements filed with the Department of Revenue pursuant to the state's revenue laws would be a return and thus confidential under s. 193.074, F.S.). However, taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F.S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute. AGO 01-74. *Cf. Inf. Op. to Echeverri*, April 30, 2010 (while property appraiser may use confidential records submitted to the value adjustment board by the taxpayer, it is not clear whether property appraiser may independently submit confidential material to the board in the absence of a taxpayer's submission although board may order production of confidential records). Similarly, absent a specific statutory exemption for assessment rolls and public information cards, such documents made or received by the property appraiser are public records subject to the Public Records Act, regardless of the confidentiality of a return that may contain information used in their creation. AGO 05-04.

#### **h. Telephone bills**

Records of telephone calls made from agency telephones are subject to disclosure in the absence of statutory exemption. *See Gillum v. Times Publishing Company*, No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991). *See also Media General Operation, Inc. v. Feeney*, 849 So. 2d 3, 6 (Fla. 1st DCA 2003), rejecting the argument that redaction of telephone numbers for calls made in the course of official business could be justified because disclosure could result in "unreasonable consequences" to the persons called. *Compare Bent v. State*, No. 4D 10-2726 (Fla. 4th DCA filed September 29, 2010) (recordings of personal telephone calls between minors in jail awaiting trial and third parties made by sheriff's office are not public records when contents of the phone calls do not involve criminal activity or a security breach). *Cf. AGO 97-05* (exemption now found in s. 119.071[5][d], F.S., for records supplied by a telecommunications company to a state or local governmental agency which contain the name, address, and telephone number of subscribers, applies to telecommunications records of a city-operated telecommunications company when the records are supplied by the city to another state or local governmental agency).

The Attorney General's Office has advised that telephone numbers in a school district's records of calls made on agency telephones are public records even when those calls may be personal and the employee pays or reimburses the school district for the calls. AGO 99-74. *And see Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), in which the court, striking the city's affirmative defense, stated that "as a matter of law, . . . billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; and, the 'official

business' of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls." *Compare Media General Operation, Inc. v. Feeney, supra*, in which the court held that under the circumstances of that case (involving access to records of cellular phone service provided by a political party for legislative employees), records of personal or private calls of the employees fell outside the definition of public records. *Cf. Inf. to Michelson*, January 27, 1992 (cellular telephone company which provided city with statements reflecting amount of usage of cell phones by city staff rather than listing individual calls, did not appear to be an "agency" for purposes of Ch. 119, F.S., making company's records of individual calls subject to disclosure).

## **i. Trade secrets and proprietary confidential business information**

### **(1) Trade Secrets**

The Legislature has created a number of specific exemptions from Ch. 119, F.S., for trade secrets. *See, e.g.,* s. 1004.78(2), F.S. (trade secrets produced in technology research within community colleges); s. 365.174, F.S. (proprietary confidential business information and trade secrets submitted by wireless 911 provider to specified agencies); s. 570.544(7), F.S. (trade secrets contained in records of the Division of Consumer Services of the Department of Agriculture and Consumer Services); and s. 627.6699(8)(c), F.S. (trade secrets involving small employer health insurance carriers).

In addition, the First District has concluded that s. 815.045, F.S., "should be read to exempt from disclosure as public records all trade secrets as defined in [s. 812.081(1)(c), F.S.]. . . ." *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781, 785-787 (Fla. 1st DCA 2003), *review denied sub nom., Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005). In *Sepro*, the court ruled that while "a conversation with a state employee is not enough to prevent [alleged trade secrets] from being made available to anyone who makes a public records request," documents submitted by a private party which constituted trade secrets as defined in s. 812.081, and which were stamped as confidential at the time of submission to a state agency, were not subject to public access. *Sepro*, at 784. *And see Cubic Transportation Systems, Inc. v. Miami-Dade County*, 899 So. 2d 453, 454 (Fla. 3d DCA 2005) (company, which supplied documents to an agency and failed to mark them as "confidential" and which continued to supply them without asserting even a legally ineffectual post-delivery claim to confidentiality for some thirty days, failed adequately to protect an alleged trade secret claim); *Seta Corporation of Boca, Inc. v. Office of the Attorney General*, 756 So. 2d 1093 (Fla. 4th DCA 2000); and *James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A., v. Rodale, Inc.*, 41 So.3d 386 (Fla. 1st DCA 2010), rejecting company's claim that information in customer complaints and company responses were trade secrets; such information "is not secret and is not [the company's] to control"). *See also* AGO 09-02 (authorized representatives of Division of Plant Industry in Department of Agriculture and Consumer Services prohibited from disclosing trade secrets under Ch. 581, F.S., to any unauthorized person, provided such trade secrets fall within the statutory definition in s. 812.081, F.S., and owner of trade secrets has taken measures to maintain the information's secrecy). *Cf. Allstate Floridian Ins. Co. v. Office of Ins. Regulation*, 981 So. 2d 617 (Fla. 1st DCA 2008), *review denied*, 987

So. 2d 79 (Fla. 2008) (to the extent Allstate believed any documents sought by the Office of Insurance Regulation were privileged as trade secrets, Allstate was required to timely seek a protective order in circuit court).

For more information on computer trade secrets, please refer to the discussion on that topic in s. D.1.h., *supra*.

## **(2) Proprietary Confidential Business Information**

The Legislature has created a number of exemptions from Ch. 119, F.S., for proprietary confidential business information. The term is generally defined by the statute creating the exemption and frequently includes trade secrets. See, e.g., s. 215.44, F.S. (State Board of Administration); s. 288.075, F.S. (economic development agency); s. 288.9626, F.S. (Florida Opportunity Fund and Institute for the Commercialization of Public Research); ss. 364.183, 366.093, 367.156, and 368.108, F.S. (Public Service Commission). Cf. *Florida Power & Light Company v. Public Service Commission*, 31 So. 3d 860 (Fla. 1st DCA 2010) (listed categories of proprietary confidential business information in s. 366.093, F.S., as exempt are not exhaustive; information relating to employees' compensation warranted confidential classification as it would have impaired utility's competitive interests). Compare *Southern Bell Telephone and Telegraph Company v. Beard*, 597 So. 2d 873, 876 (Fla. 1st DCA 1992) (Public Service Commission's determination that statutory exemption for proprietary confidential business information should be narrowly construed and did not apply to company's internal self-analysis was "consistent with the liberal construction afforded the Public Records Act in favor of open government").

## **4. Investigative records of non law enforcement agencies**

### **a. Investigative records subject to Ch. 119, F.S., in absence of legislative exemption**

In the absence of a specific legislative exemption, investigative records made or received by public agencies are open to public inspection pursuant to Ch. 119, F.S. *State ex rel. Veale v. City of Boca Raton*, 353 So. 2d 1194 (Fla. 4th DCA 1977), *cert. denied*, 360 So. 2d 1247 (Fla. 1978). *And see Caswell v. Manhattan Fire and Marine Insurance Company*, 399 F.2d 417 (5th Cir. 1968) (ordering that certain investigative records of the State Insurance Commission be produced for inspection under Ch. 119, F.S.). Accord AGO 91-75 (documents containing information compiled by school board employees during an investigation of school district departments are open to inspection in the absence of statutory exemption); A GO 85-79 (interoffice memoranda, correspondence, inspection reports of restaurants, grocery stores and other such public premises, nuisance complaint records, and notices of violation of public health laws maintained by county public health units are subject to disclosure in the absence of any statutory exemption or confidentiality requirement); and AGO 71-243 (inspection reports made or received by a school board in connection with its official investigation of the collapse of a school roof constitute public records). Cf. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973) (no quasi-judicial exception to the Sunshine Law which would allow closed door hearings or deliberations when a



board or commission is acting in a "quasi-judicial" capacity).

Disclosure of records of investigative proceedings is not violative of privacy rights arising under the state or federal Constitutions. See *Garner v. Florida Commission on Ethics*, 415 So. 2d 67 (Fla. 1st DCA 1982), *review denied*, 424 So. 2d 761 (Fla. 1983) (public's right to view commission files prepared in connection with investigation of alleged violations of the Code of Ethics outweighs an individual's disclosural privacy rights). For more information on privacy issues, please see s. E.15., *infra*.

The investigative exemptions now found in paragraphs (2)(c) through (f), (h) and (i) of s. 119.071(2), F.S., limit disclosure of specified *law enforcement* records, and thus do not apply to investigations conducted by agencies outside the criminal justice system. See *Douglas v. Michel*, 410 So. 2d 936, 939 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985) (exemption for "information revealing surveillance techniques or procedures or personnel" [now found at s. 119.071(2)(d)] does not apply to a hospital's personnel files). See also AGO 91-75, stating that the active criminal investigation and intelligence exemption does not apply to information compiled in a school board investigation into the conduct of certain school departments; and AGO 87-51, concluding that complaints from state labor department employees relating to departmental integrity and efficiency do not constitute criminal intelligence information or criminal investigative information.

Thus, the contents of an investigative report compiled by the Inspector General for a state agency in carrying out his duty to determine program compliance are not converted into criminal intelligence information merely because the Florida Department of Law Enforcement also conducts an investigation or because such report or a copy thereof has been transferred to the department. Inf. Op. to Slye, August 5, 1993.

## **b. Statutory exemptions**

A number of exemptions exist for certain investigatory records. For a more complete listing, please refer to Appendix D.

### **(1) Ethics investigations**

The complaint and records relating to the complaint or to any preliminary investigation of the Florida Ethics Commission, a Commission on Ethics and Public Trust established by a county or municipality, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326, F.S., are confidential and exempt until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records be made public, or until the commission or county or municipality that has established such a local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred. Section 112.324(2)(a) and (c), F.S. See also s. 112.3215(8)(b) and (d), F.S. (providing confidentiality for certain records relating to Ethics Commission investigation of alleged violations of lobbying laws).

However, nothing in s. 112.324, F.S., provides confidentiality for similar or identical

information in the possession of other agencies of government. AGO 96-05. Thus, a police report of an investigation of a public employee that has been concluded and is in the possession of the police department is not made confidential by the fact that the same issue and the same individual are the subject of an ethics complaint pursuant to Part II, Ch. 112, F.S., or because a copy of the police report may be included in information obtained by the Ethics Commission pursuant to its powers to investigate complaints of ethics violations. *Id.*

## **(2) State inspector general investigations**

Audit workpapers and reports of state agency inspectors general appointed in accordance with s. 20.055, F.S., are public records to the extent that they do not include information which has been made confidential and exempt from s. 119.07(1), F.S. Section 20.055(5)(b), F.S.

However, s. 112.31901(2), F.S., authorizes the Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, F.S., to certify that an investigatory record of the Chief Inspector General or an agency inspector general requires an exemption in order to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. If so certified, the investigatory records are exempt from s. 119.07(1), F.S., until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Section 112.31901(1), F.S. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act. Section 112.31901(3), F.S. *Cf.* s. 943.03(2), F.S., providing for confidentiality of Department of Law Enforcement records relating to an active investigation of official misconduct.

## **(3) State licensing investigations**

Pursuant to s. 455.225(10), F.S., complaints against a licensed professional filed with the state licensing board or the Department of Business and Professional Regulation are confidential and exempt from disclosure until 10 days after probable cause has been found to exist by the probable cause panel of the licensing board or by the Department of Business and Professional Regulation, or the professional waives his or her privilege of confidentiality whichever occurs first. A similar exemption applies to complaints and investigations conducted by the Department of Health and Licensing boards within that department as provided in s. 456.073(10), F.S.

Complaints filed by a municipality against a licensed professional are included within the confidentiality provisions. AGO 02-57. However, while the complaint filed by the municipality with the state licensing agency is exempt, the exemption afforded by the statute does not extend to other records held by the city related to the nature of the alleged offense by the licensed professional. *Id.*

## **(4) Whistle-blower investigations**

Section 112.3188(1), F.S., provides, with limited exceptions, for the confidentiality of

the identity of a whistle-blower who discloses in good faith to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. A complainant may waive the right to confidential treatment of his or her name or identity. AGO 95-20. However, an individual may not be required to sign a waiver of confidentiality as a condition of processing a complaint. AGO 96-40.

In order to qualify as a whistle-blower complaint, particular information must be disclosed to the statutorily designated officials; a general complaint of wrongdoing to officials other than those specifically named in s. 112.3188(1), F.S., does not entitle the complainant to whistle-blower protection. AGO 98-37. *And see* AGO 99-07 (county inspector general qualifies as an "appropriate local official" for purposes of the whistle-blower law); and AGO 96-40 (town ethics commission constitutes "appropriate local official" for purposes of processing complaints under the whistle-blower law).

Section 112.3188(2)(a), F.S., states that except as specifically authorized in s. 112.3189, F.S., all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt if the information is being received or derived from allegations as set forth in s. 112.3188(1)(a) or (b), F.S., and an investigation is "active" as defined in s. 112.3188(2)(c), F.S.

Information received by an appropriate local official or local chief executive officer or produced or derived from fact-finding or investigations by local government pursuant to s. 112.3187(8)(b), F.S. [authorizing administrative procedures for handling whistle-blower complaints filed by local public employees] is confidential and exempt, provided that the information is being received or derived from allegations set forth in s. 112.3188(1) and an investigation is active as defined in the section. Section 112.3188(2)(b), F.S. The exemption applies to records received by a municipality conducting an active investigation of a whistle-blower complaint, and is not limited to records received as part of an active investigation of a complaint of retaliation against a whistle-blower. AGO 98-37. The exemption applies whether the allegations of wrongdoing were received from an anonymous source or a named individual; in either case information received or generated during the course of the investigation is subject to the exemption. AGO 99-07.

However, while the name or identity of the individual disclosing this information is confidential, the initial report of wrongdoing received by the municipality is a public record, since that information was received before an investigation began. AGO 98-37.

## 5. Litigation records

### a. Attorney-client communications

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Ch. 119, F.S.). See also *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (although s. 90.502, F.S., of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Ch. 119, F.S.).

Moreover, public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over The Florida Bar. *City of North Miami v. Miami Herald Publishing Company*, *supra*. And see *Seminole County, Florida v. Wood*, 512 So. 2d 1000, 1001 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988) (the rules of ethics provide that an attorney may divulge a communication when required by law; the Legislature has plenary authority over political subdivisions and can require disclosure of otherwise confidential materials); and AGO 98-59 (records in the files of the former city attorney, who served as a contract attorney for the city, which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor).

On the other hand, the Florida Supreme Court has ruled that files in the possession of the Capital Collateral Representative (CCR) in furtherance of its representation of an indigent client are not subject to public disclosure under Ch. 119, F.S. The Court noted that the files are not governmental records for purposes of the public records law but are the "private records" of the CCR client. *Kight v. Dugger*, 574 So. 2d 1066 (Fla. 1990). And see *Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999) (private attorneys retained by individual county commissioners in a criminal case were not "acting on behalf" of a public agency so as to become subject to the Public Records Act, even though the board of county commissioners subsequently voted to pay the commissioners' legal expenses in accordance with a county policy providing for reimbursement of legal expenses to individual county officers who successfully defend criminal charges filed against them arising out of the performance of their official duties).

### b. Attorney work product

The Supreme Court has ruled that the Legislature and not the judiciary has exclusive authority to exempt litigation records from the scope of Ch. 119, F.S. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). See also *Edelstein v. Donner*, 450 So. 2d 562 (Fla. 3d DCA 1984), *approved*, 471 So. 2d 26 (Fla. 1985), noting that in the absence of legislation, a work product exemption is "non-existent;" and *Hillsborough*

*County Aviation Authority v. Azzarelli Construction Company*, 436 So. 2d 153, 154 (Fla. 2d DCA 1983), stating that the Supreme Court's decision in *Wait* "constituted a tacit recognition that work product can be a public record."

With the enactment of s. 119.071(1)(d), F.S., the Legislature created a narrow statutory exemption for certain litigation work product of agency attorneys. See *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla. 1986), in which the Court noted that the exemption was enacted because of "developing case law affording public entities no protection under either the work product doctrine or the attorney-client privilege . . . ."

Section 119.071(1)(d)1., F.S., states:

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 disclosure] 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.

Note that this statutory exemption applies to attorney work product that has reached the status of becoming a public record; as discussed more extensively in s. D.5.e., of this manual, relating to "attorney notes," certain preliminary trial preparation materials, such as handwritten notes for the personal use of the attorney, are not considered to be within the definitional scope of the term "public records" and, therefore, are outside the scope of Ch. 119, F.S. See *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998). Under the terms of the statute, the work product 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." Section 119.071(1)(d)2., F.S. See also AGO 94-77 (work product exemption continues to apply to records prepared by the county attorney when these records are transferred to the city attorney pursuant to a transfer agreement whereby the city is substituted for the county as a party to the litigation).

An agency asserting the work product exemption must identify the potential parties to the litigation or proceedings. Section 119.071(1)(d)2., F.S. If a court finds that the record was improperly withheld, the party seeking the records shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court. *Id.* As one court has noted, the inclusion of an attorney's fees sanction "was prompted by the Legislature's concern that government entities might claim the work product privilege whenever public access to their records is demanded." *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority*, 640 So. 2d 216, 218

(Fla. 2d DCA 1994).

## **(1) Scope of exemption**

### **(a) Attorney bills and payments**

Only those records which reflect a "mental impression, conclusion, litigation strategy, or legal theory" are included within the parameters of the work product exemption. Accordingly, in AGO 85-89, the Attorney General's Office concluded that a contract between a county and a private law firm for legal counsel and documentation for invoices submitted by such firm to the county do not fall within the work product exemption. *Accord* AGO 00-07 (records of outside attorney fee bills for the defense of the county, as well as its employees who are sued individually, for alleged civil rights violations are public records subject to disclosure).

If the bills and invoices contain some exempt work product--i.e., "mental impression[s], conclusion[s], litigation strateg[ies], or legal theor[ies],"--the exempt material may be deleted and the remainder disclosed. AGO 85-89. However, information such as the hours worked or the hourly wage clearly would not fall within the scope of the exemption. *Id.* And see *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998) ("Obviously, an entry on a [billing] statement which identifies a specific legal strategy to be considered or puts a specific amount of settlement authority received from the client, would fall within the exemption. On the other hand, a notation that the file was opened, or that a letter was sent to opposing counsel, would not.").

Thus, an agency which "blocked out" most notations on invoices prepared in connection with services rendered by and fees paid to attorneys representing the agency, "improperly withheld" nonexempt material when it failed to limit its redactions to those items "genuinely reflecting its 'mental impression, conclusion, litigation strategy, or legal theory.'" *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority, supra.* And see *Davis v. Sarasota County Public Hospital Board*, 480 So. 2d 203 (Fla. 2d DCA 1985), *review denied*, 488 So. 2d 829 (Fla. 1986), holding in part that a citizen seeking to examine records of a public hospital board concerning the payment of legal fees was entitled to examine actual records, not merely excerpts taken from information stored in the hospital's computer.

### **(b) Investigations**

Section 119.071(1)(d), F.S., does not create a blanket exception to the Public Records Act for all attorney work product. AGO 91-75. The exemption is narrower than the work product privilege recognized by the courts for private litigants. AGO 85-89. In order to qualify for the work product exemption, the records must have been prepared exclusively for or in anticipation of imminent or pending *litigation or adversarial administrative proceedings*; records prepared for other purposes may not be converted into exempt material simply because they are also used in or related to the litigation. *See, e.g., Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007), *cert. denied*, 553 U.S. 1059 (2008) (memoranda prepared by corrections department attorney regarding lethal injection procedures does not constitute exempt attorney work product because memorandum does not relate to any pending litigation nor appears to have been

prepared exclusively for litigation); *MHM Correctional Services, Inc. v. State, Department of Corrections*, No. 2009 CA 2105 (Fla. 2d Jud. Cir., June 10, 2009) (department wrongfully withheld portions of an e-mail stream regarding the bid process as protected work product or privileged communications as none of the e-mails were prepared in contemplation of litigation as required by the statute).

Moreover, only those records which are prepared by or at the express direction of the *agency attorney* and reflect "a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency" are exempt from disclosure until the conclusion of the proceedings. (e.s.) See *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218, 219 (Fla. 1985) (noting application of exemption to "government agency, attorney-prepared litigation files during the pendency of litigation"); and *City of Miami Beach v. DeLapp*, 472 So. 2d 543 (Fla. 3d DCA 1985) (opposing counsel not entitled to city's legal memoranda as such material is exempt work product). And see *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986) (trial court must examine city's litigation file in accident case and prohibit disclosure only of those records reflecting mental impression, conclusion, litigation strategy or legal theory of attorney or city); *Jordan v. School Board of Broward County*, 531 So. 2d 976, 977 (Fla. 4th DCA 1988) (record did not constitute exempt work product because it "was not prepared at an attorney's express direction nor did it reflect a conclusion and mental impression of appellee"); and *Lightbourne v. McCollum, supra* (exemption inapplicable as memoranda conveyed specific factual information rather than mental impressions or litigation strategies).

Thus, a circuit judge refused to apply the exemption to tapes, witness statements and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp. See *Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995). Similarly, in AGO 05-23, the Attorney General's Office advised that notes taken by the assistant city attorney during interviews with co-workers of certain city employees in order to ascertain if employee discipline was warranted are not exempt from disclosure. See also AGO 91-75 (work product exemption not applicable to documents generated or received by school district investigators, acting at the direction of the school board to conduct an investigation of certain school district departments). Cf. *Tober v. Sanchez*, 417 So. 2d 1053, 1055 (Fla. 3d DCA 1982), *review denied sub nom., Metropolitan Dade County Transit Agency v. Sanchez*, 426 So. 2d 27 (Fla. 1983) (documents which are given by a client to an attorney in the course of seeking legal advice are privileged in the attorney's hands only if the documents were privileged in the client's hands; thus, otherwise public records made or received by agency personnel do not become privileged merely by transferring them to the agency attorney).

## **(2) Commencement and termination of exemption**

Unlike the open meetings exemption in s. 286.011(8), F.S., for certain attorney-client discussions between a governmental agency and its attorney, s. 119.071(1)(d), F.S., is not limited to records created for pending litigation or proceedings, but applies also to records prepared "in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings." (e.s.) See AGO 98-21, discussing the

differences between the public records work product exemption in s. 119.071(1)(d) and the Sunshine Law exemption in s. 286.011.

The exemption from disclosure provided by s. 119.071(1)(d), F.S., is *temporary* and limited in duration. *City of North Miami v. Miami Herald Publishing Co.*, *supra*. The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if disclosure of the information in the concluded case could negatively impact the agency's position in related cases or claims. See *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 ( Fla. 4th DCA 1990); *Seminole County v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988); *Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991); and *Lightbourne v. McCollum*, *supra* (rejecting a "continuing exemption" claim by the state). See also *Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007), stating that the phrase "conclusion of the litigation or adversarial administrative proceedings" encompasses post-judgment collection efforts such as a legislative claims bill. Cf. *State v. Coca-Cola Bottling Company of Miami, Inc.*, *supra* (although state cannot claim work product exemption for litigation records after conclusion of litigation, Ch. 119 does not cover oral testimony; thus, opposing counsel not entitled to take *depositions* of state representatives regarding the concluded litigation).

#### **(a) Settlement records**

Settlement documents are normally subject to release once litigation is over between the parties, even if other issues remain, because the work product exemption does not apply once the litigation is no longer pending. *And see* s. 69.081(8)(a), F.S., stating, subject to limited exceptions, that "[a]ny portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against the state, its agencies or subdivisions or against any municipality or constitutionally created body or commission is void, contrary to public policy, and may not be enforced;" and Inf. Op. to Barry, June 24, 1998, citing to s. 69.081(8)(a), F.S., and stating that a state agency may not enter into a settlement agreement or other contract which contains a provision authorizing the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file.

For example, if the state settles a claim against one company accused of conspiracy to fix prices, the state has concluded the litigation against that company. Thus, the records prepared in anticipation of litigation against that company are no longer exempt from disclosure even though the state has commenced litigation against the alleged co-conspirator. *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990). *And see Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991) (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure of their assessment of the merits of the settled case and their litigation strategy would have a detrimental effect upon the agency's position in the related case). Cf. *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204, 205 ( Fla. 2d DCA 1998) , *review denied*, 727 So. 2d 909 ( Fla. 1999) ( private



company under contract with sheriff to provide medical services for inmates at county jail must release records relating to a settlement agreement with an inmate because all of its records that would normally be subject to the Public Records Act if in the possession of the public agency, are likewise covered by that law, even though in the possession of the private corporation).

Regarding draft settlements received by an agency in litigation, a circuit court held that draft settlement agreements furnished to a state agency by a federal agency were public records despite the department's agreement with the federal agency to keep such documents confidential. *Florida Sugar Cane League, Inc. v. Department of Environmental Regulation*, No. 91-2108 (Fla. 2d Cir. Ct. September 20, 1991), *per curiam affirmed*, 606 So. 2d 1267 (Fla. 1st DCA 1992). *And see Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (technical documents or data which were not prepared for the purpose of carrying litigation forward but rather were jointly authored among adversaries to promote settlement are not exempted as attorney work product).

### **(b) Criminal cases**

In a criminal case, the "conclusion of the litigation" for purposes of the termination of the work product exemption occurs when the conviction and sentence have become final. *State v. Kokal*, 562 So. 2d 324 (Fla. 1990). However, the state attorney may still claim the work product exemption for his or her current file in a pending motion for postconviction relief because there is ongoing litigation with respect to those documents. *See Walton v. Dugger*, 634 So. 2d 1059 (Fla. 1993) (state attorney not required to disclose information from a current file relating to a postconviction relief motion).

The Florida Supreme Court, however, has noted the state's obligation in a criminal case to "disclose any exculpatory document within its possession or to which it has access, even if such document is not subject to the public records law. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)." *Walton v. Dugger*, 634 So. 2d at 1062. *Accord Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

### **c. Other statutory exemptions relating to litigation records**

Section 768.28(16)(b), F.S., provides an exemption for claim files maintained by agencies pursuant to a risk management program for tort liability until the termination of all litigation and settlement of all claims arising out of the same incident. *See Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007), stating that the phrase "settlement of all claims arising out of the same incident" included a legislative claims bill.

The exemption afforded by s. 768.28(16), F.S., is limited to tort claims for which the agency may be liable under s. 768.28, F.S., and does not apply to federal civil rights actions under 42 U.S.C. s. 1983. A.G.O.s 00-20 and 00-07. *And see Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995) (exemption now found at s. 758.28[16][b], F.S., for risk management files did not apply to tapes, witness statements and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp). Moreover, the exemption

does not include outside attorney invoices indicating hours worked and amount to be paid by the public agency, even though the records may be maintained by the agency's risk management office pursuant to a risk management program. AGO 00-07. *And see* AGO 92-82 (open meetings exemption provided by s. 768.28, F.S., applies only to meetings held *after* a tort claim is filed with the risk management program).

Section 624.311(2), F.S., provides that the "records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt [from disclosure] until termination of all litigation and settlement of all claims arising out of the same incident." A county's self-insured workers compensation program is the legal equivalent of "insurance" for purposes of this exemption. *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998). *And see* AGO 85-102 (s. 624.311, F.S., exemption includes correspondence regarding insurance claims negotiations between a county's retained counsel and its insurance carriers until termination of litigation and settlement of claims arising out of the same incident). *Compare* s. 284.40(2), F.S. (claim files maintained by the risk management division of the Department of Financial Services are confidential, shall be only for the use of the department, and are exempt from disclosure); and s. 1004.24(4), F.S. (claim files of self-insurance program adopted by Board of Governors, or the board's designee, are confidential and exempt); 627.3121(1), F.S. (claims files held by the Florida Workers' Compensation Joint Underwriting Association, Inc., are confidential and exempt).

#### **d. Attorney notes**

Relying on its conclusion in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980), the Florida Supreme Court has recognized that "not all trial preparation materials are public records." *State v. Kokal*, 562 So. 2d 324, 327 (Fla. 1990). In *Kokal*, the Court approved the decision of the Fifth District in *Orange County v. Florida Land Co.*, 450 So. 2d 341, 344 (Fla. 5th DCA 1984), *review denied*, 458 So. 2d 273 (Fla. 1984), which described certain documents as not within the term "public records" because they were not used to perpetuate, formalize, or communicate knowledge:

Document No. 2 is a list in rough outline form of items of evidence which may be needed for trial. Document No. 9 is a list of questions the county attorney planned to ask a witness. Document No. 10 is a proposed trial outline. Document No. 11 contains handwritten notes regarding the county's sewage system and a meeting with Florida Land's attorneys. Document No. 15 contains notes (in rough form) regarding the deposition of an anticipated witness. These documents are merely notes from the attorneys to themselves designed for their own personal use in remembering certain things. They seem to be simply *preliminary* guides intended to aid the attorneys when they later formalized the knowledge. We cannot imagine that the Legislature, in enacting the Public Records Act, intended to include within the term 'public records' this type of material. [Emphasis supplied by Court]

Similarly, in *Johnson v. Butterworth*, 713 So. 2d 985, 987 (Fla. 1998), the Court ruled that "outlines, time lines, page notations regarding information in the record, and other

similar items" in the case file, do not fall within the definition of public record, and thus are not subject to disclosure. See also *Patton v. State*, 784 So. 2d 380, 389 (Fla. 2000) (prosecutor's personal notes, i.e., handwritten details of specific questions to ask jurors during voir-dire, notes on potential jurors, a time-line of events, or specific detailed questions for witnesses, are not public records); *Scott v. Butterworth*, 734 So. 2d 391, 393 (Fla. 1999) (handwritten notes and drafts of pleadings are not public records); *Ragsdale v. State*, 720 So. 2d 203, 205 (Fla. 1998) ("attorney's notes and other such preliminary documents are not public records and are never subject to public records disclosure"); *Valle v. State*, 705 So. 2d 1331, 1335 (Fla. 1997) (prosecutors' notes to themselves for their own personal use, including outlines of opening and closing arguments and notes of witness depositions are not public records); *Lopez v. State*, 696 So. 2d 725, 727 (Fla. 1997) (handwritten notes dealing with trial strategy and cross-examination of witnesses are not public records); and *Atkins v. State*, 663 So. 2d 624, 626 (Fla. 1995) (notes of state attorney's investigations and annotated photocopies of decisional case law are not public records).

By contrast, documents prepared to communicate, perpetuate, or formalize knowledge constitute public records and are, therefore, subject to disclosure in the absence of statutory exemption. See *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), stating that "[i]nter-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."

Thus, in *Coleman v. Austin*, 521 So. 2d 247, 248 (Fla. 1st DCA 1988), the court observed that "although notes from attorneys to themselves might not be public records when intended for their own personal use, inter-office and intra-office memoranda may constitute public records even though encompassing trial preparation materials." And see *Hillsborough County Aviation Authority v. Azzarelli Construction Company*, 436 So. 2d 153 (Fla. 2d DCA 1983) (rejecting an agency's contention that when a public body is engaged in litigation, the pleadings and evidence it presents in court constitute the formal agency statement on the subject matter and all else is merely preliminary or preparatory and, therefore, not a public record). Accord *Orange County v. Florida Land Company*, *supra*, in which the court concluded that trial preparation materials consisting of interoffice and intraoffice memoranda communicating information from one public employee to another or merely prepared for filing, even though not part of the agency's formal work product, were public records although such circulated trial preparation materials might be exempt from disclosure pursuant to s. 119.071(1)(d), F.S., while the litigation is ongoing. See also AGO 05-23 (notes taken by city's assistant labor attorney and used to communicate information to the labor attorney regarding possible future personnel actions were public records available for inspection).

## 6. Personnel records

### a. Personnel records open to inspection unless exempted by law

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted an agency's personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection and copying under s. 119.07(1), F.S. *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985). And see *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002) ("only the custodian of such records can assert any applicable exemption; not the employee").

In accordance with this principle, the following are some of the personnel records which have been determined to be subject to disclosure:

Applications for employment--AGOs 77-48 and 71-394;

Communications from third parties--*Douglas v. Michel*, 410 So. 2d 936 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985);

Grievance records--*Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981);

Resumes--*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980);

Salary information--*Lewis v. Schreiber*, No. 92-8005(03) (Fla. 17th Cir. Ct. June 12, 1992), *per curiam affirmed*, 611 So. 2d 531 (Fla. 4th DCA 1992); AGO 73-30;

Travel vouchers--*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, *supra*; *Lewis v. Schreiber*, *supra*.

Accordingly, an agency should assume that all information in a personnel file is subject to inspection unless a specific statutory exemption exists which would permit withholding a particular document from disclosure. For more information on the exemptions applicable to law enforcement officers, please refer to the discussion of law enforcement personnel records found at s. G.11., *infra*. Exemptions that pertain to personnel records of educators are discussed in s. J.2., *infra*.

### b. Employment search or consultant records

"[D]ocuments provided to a consultant in relation to his acting on behalf of a public agency are public documents." *Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997). Thus, if an agency uses a recruitment company to conduct an employment search for the agency, records made or received by the private company in connection with the search are public records. AGO 92-80. See also *Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980) (firm of consultants hired to conduct an employment search for position of managing director of a public agency was "acting on behalf of" a public agency and thus letters, memoranda, resumes, and travel

vouchers made or received by consultants as part of search were public records).

### c. Privacy concerns

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. See *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985), holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist.

"Absent an applicable statutory exception, pursuant to Florida's Public Records Act (embodied in chapter 119, Florida Statutes), public employees (as a general rule) do not have privacy rights in such records." *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002). See also *Forsberg v. Housing Authority of City of Miami Beach*, 455 So. 2d 373 (Fla. 1984); *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, *supra*; and *Mills v. Doyle*, *supra*. But see *Fadjo v. Coon*, 633 F.2d 1172, 1175n.3 (5th Cir. 1981), noting that "it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy." For additional information on general privacy issues, please refer to the discussion in s. E.15., *infra*.

Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisner*, 345 So. 2d 646, 648 (Fla. 1977):

No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.

See also *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) (absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure); *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files); and AGO 87-48 (statute prohibiting the placement of anonymous materials in district school employee's personnel file does not create an exemption from disclosure requirements of Ch. 119, F.S.). Cf. *United Teachers of Dade v. School Board of Dade County*, No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992) (home telephone numbers and addresses of school district employees not protected by constitutional right to privacy; only the Legislature can exempt such information).

Public employers should note, however, that a court has held that an agency must provide a discharged employee with an opportunity for a post-termination name-clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published. *Buxton v. City of Plant City, Florida*, 871 F.2d 1037 (11th Cir. 1989). See also *Garcia v. Walder Electronics, Inc.*, 563 So. 2d 723 (Fla. 3d DCA 1990), *review denied*, 576 So. 2d 287 (Fla. 1990) (public employer has an affirmative duty to inform a discharged employee of his right to seek a post-termination

name-clearing hearing). *Cf. Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1303 (11th Cir. 2001) (failure to provide name-clearing hearing to employee who alleged that he was denied a promotion due to stigmatizing information in his personnel file does not violate the employee's due process rights, because "in this circuit a 'discharge or more' is required").

#### **d. Conditions for inspection of personnel records**

An agency is not authorized to unilaterally impose special conditions for the inspection of personnel records. An automatic delay in the production of such records is invalid. *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (automatic 48 hour delay unauthorized by Ch. 119, F.S.).

##### **(1) Presence of employee**

In the absence of express legislative authority, the inspection of personnel records may not be delayed in order to allow the employee to be notified or present during the inspection of the public records relating to that employee. As stated by the Supreme Court, the "[Public Records] Act does not provide that the employee be present during the inspection, nor even that the employee be given notice that an inspection has been requested or made." *Tribune Company v. Cannella*, 458 So. 2d at 1078. Compare s. 1012.31(3)(a)3., F.S., providing that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified by certified mail or personal delivery as provided in s. 1012.31(2)(c), F.S.

##### **(2) Separate files**

An agency is not authorized to maintain personnel records of its employees under two headings, one open and one confidential, in the absence of statutory authorization. AGO 73-51. Nor may a city, absent a statutory exemption for such records, agree to remove counseling slips and written reprimands from an employee's personnel file and maintain such documents in a separate disciplinary file. AGO 94-54. Similarly, an agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. AGO 94-75. *Cf. s. 69.081(8)(a)*, F.S., providing, subject to limited exceptions, that any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is "void, contrary to public policy, and may not be enforced;" and Inf. Op. to Barry, June 24, 1998, citing to s. 69.081(8)(a), and stating that "a state agency may not enter into a settlement agreement or other contract which contains a provision authorizing the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file."

#### **e. Collective bargaining**

##### **(1) Relationship of collective bargaining agreement to personnel records**

A collective bargaining agreement between a public employer and its employees

may not validly make the personnel records of public employees confidential or exempt the same from the Public Records Act. AGO 77-48. Thus, employee grievance records are disclosable even though classified as confidential in a collective bargaining contract because "to allow the elimination of public records from the mandate of Chapter 119 by private contract would sound the death knell of the Act." *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981). *Cf. Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S.).

Similarly, unless authorized by law, a city may not agree through collective bargaining to remove references to the initial proposed disciplinary action in an employee's personnel file when a settlement agreement results in a reduced disciplinary action. AGO 94-54. *Accord* AGO 94-75 (city may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the established retention schedule approved by the Division of Library and Information Services of the Department of State).

## **(2) Collective bargaining work product exemption**

Section 447.605(3), F.S., provides:

All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1), F.S.

The exemption is limited and does not remove budgetary or fiscal information from the purview of Ch. 119, F.S. See *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747, 749 (Fla. 1st DCA 1980), noting that records which are prepared for other purposes do not, as a result of being used in negotiations, come within the s. 447.605(3) exemption; and *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976), ordering that working papers used in preparing a college budget be produced for inspection by a labor organizer.

Thus, proposals and counter proposals presented during the course of collective bargaining would appear to be subject to public disclosure. However, written notes taken by the representative of a fire control district during collective bargaining sessions for use in preparing for subsequent bargaining sessions which reflect the impressions, strategies and opinions of the district representative are exempt pursuant to s. 447.605(3), F.S. *Inf. Op. to Fulwider*, June 14, 1993.

### **f. Statutory exemptions**

As emphasized in the preceding discussion, the exclusive authority to exempt personnel records from disclosure is vested in the Legislature. A number of exemptions have been enacted relating to various kinds of personnel records. The following are examples of some of the exemptions provided by statute. For a more complete listing of exemptions, please see Appendix D.

### **(1) Annuity or custodial account activities**

Records identifying individual participants in any annuity contract or custodial account under s. 112.21, F.S. (relating to tax-sheltered annuities or custodial accounts for employees of governmental agencies) and their personal account activities are confidential and exempt from s. 119.07(1), F.S. Section 112.21(1), F.S.

### **(2) Complaints**

Complaints filed against law enforcement officers are discussed in s. G.11.a., *infra*, of this manual. Complaints against public school system employees are discussed in s. J.2., *infra*, of this manual.

Complaints and other records in the custody of any agency which relate to a complaint of discrimination based on 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 related activities are exempt from 119.07(1), F.S., until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of a hearing or court proceeding. Section 119.071(2)(g), F.S. See *City of St. Petersburg Junior College*, No. 93-0004210-CI-13 (Fla. 6th Cir. Ct. January 3, 1994) (exemption no longer applicable once city has issued a "letter of cause" determination following its investigation of a discrimination complaint). *And see* AGO 96-93 (prior to completion of an investigation and a finding of probable cause, records of a county equal opportunity board are exempt from disclosure). *But see* AGO 09-10 stating that when an agency has reached a settlement with an individual who has filed a discrimination complaint, the claimant is considered to have pursued the claim and may not request confidentiality pursuant to s. 119.071(2)(g)2., F.S.

### **(3) Criminal history information**

In some cases, criminal or juvenile records information obtained by specific agencies as part of a background check required for certain positions has been made confidential and exempt from s. 119.07(1), F.S., or use of the information is restricted. See, e.g., s. 110.1127(3)(d) and (e), F.S. (positions in programs providing care to children, the developmentally disabled, or vulnerable adults, or positions having access to a bus records); s. 1002.36(7)(d), F.S. (School for the Deaf and the Blind); and s. 39.821, F.S. (guardian ad litem).

Federal confidentiality provisions may also apply to criminal history information received from the U.S. government. See AGO 99-01 (criminal history information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection under Florida's Public Records Act).

Sections 943.0585 and 943.059, F.S., prohibit a records custodian who has received information relating to the existence of an expunged or sealed criminal history record from disclosing the existence of such record. AGO 94-49.



#### **(4) Deferred compensation**

All records identifying individual participants in any deferred compensation plan under the Government Employees' Deferred Compensation Plan Act and their personal account activities shall be confidential and exempt from s. 119.07(1), F.S. Section 112.215(7), F.S.

#### **(5) Department of the Lottery**

Department of the Lottery employee personnel information unrelated to compensation, duties, qualifications, or responsibilities of employees, which the Department has deemed confidential by rule in accordance with the terms and conditions of the subsection is confidential and exempt from s. 119.07(1), F.S. Section 24.105(12)(a), F.S.

#### **(6) Direct deposit**

Direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1), F.S. With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt. Section 17.076(5), F.S.

#### **(7) Drug test results**

Drug test results and other information received or produced by a state agency employer as a result of a drug-testing program in accordance with s. 112.0455, F.S., the Drug-Free Workplace Act, are confidential and exempt from s. 119.07(1), F.S., and may not be disclosed except as authorized in the statute. Section 112.0455(11), F.S. See *also* s. 112.0455(8)(l) and (u), F.S.

While the provisions of s. 112.0455, F.S., are applicable to state agencies and not to municipalities, ss. 440.101-440.102, F.S., may be used by a municipality or other entity that is an "employer" for purposes of these statutes, to establish a drug-free workplace program. See AGO 98-38. Section 440.102(8)(a), F.S., provides for confidentiality of drug test results or other information received as a result of a drug-testing program. *Cf.* AGO 94-51 (city not authorized to delete or remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to s. 440.102, F.S.); and *Inf. Op. to McCormack*, May 13, 1997 (s. 440.102[8], F.S., applies to public employees and not to drug test results of public assistance applicants). *And see* s. 443.1715(3), F.S., relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under the unemployment compensation law.

In AGO 96-58, the Attorney General's Office advised that the medical director for a city fire and rescue department may submit drug test results to the state health department pursuant to s. 401.265(2), F.S., requiring a medical director to report to the department any emergency medical technician or paramedic who may have acted in a manner constituting grounds for discipline under the licensing law. The tests were

conducted during routine pre-employment and annual fitness for duty examinations and not pursuant to ss. 440.101-440.102, F.S.

### **(8) Employee assistance program**

An employee's personal identifying information contained in records held by the employing agency relating to that employee's participation in an employee assistance program is confidential and exempt from disclosure. See ss. 110.1091 (state employees), 125.585 (county employees), and 166.0444 (municipal employees), F.S.

### **(9) Evaluations of employee performance**

There are exemptions from s. 119.07(1), F.S., for evaluations of employee performance contained in limited access records which are prescribed by a hospital or other facility licensed under Ch. 395, F.S., for employees of the facility, s. 395.3025(9), F.S.; or prescribed by the State Board of Education for community college personnel, s. 1012.81, F.S.; or prescribed by a university board of trustees for its employees, s. 1012.91, F.S. Employee evaluations of public school system employees are confidential until the end of the school year immediately following the school year during which the evaluation was made; however, no evaluations made prior to July 1, 1983, shall be made public. Section 1012.31(3)(a)2., F.S.

For more information on this subject, please refer to s. 119.07(1), *infra* (hospital records) and s. 1012.31(3)(a)2., *infra* (education personnel records).

### **(10) Examination questions and answer sheets**

Examination questions and answer sheets of examinations administered by governmental entities for the purpose of licensure, certification, or employment are exempt from mandatory disclosure requirements. Section 119.071(1)(a), F.S. See *Dickerson v. Hayes*, 543 So. 2d 836, 837 (Fla. 1st DCA 1989) (applying exemption to portions of rating sheets used by promotion board which contained summaries of applicants' responses to oral examination questions where the oral questioning "was a formalized procedure with identical questions asked of each applicant [which] 'tested' the applicants' response both as to style and content").

A person who has taken an examination has the right to review his or her own completed examination. Section 119.071(1)(a), F.S. See AGO 76-210, stating that an examinee has the right to inspect the results of a completed civil service promotional examination, including question and answer sheets, after the examination has been completed. However, the examinee possesses only the right to *review* his or her own completed examination and may not make or obtain copies of that examination. AGO 81-12.

The exemption from disclosure in s. 119.071(1)(a), F.S., applies to examination questions and answers, and does not include the "impressions and grading of the responses" by the examiners. See *Dickerson v. Hayes*, *supra* at 837. See also *Gillum v. Times Publishing Company*, No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991) (newspaper entitled to access to employment polygraph records "to the extent such

records consist of polygraph machine graph strips and examiners' test results, including the bottom portion of the machine graph denoted 'Findings and Comments' or similar designation"; however, agency could redact "any examinee's actual answers to questions or summaries thereof"). Compare s. 455.229(1), F.S., providing confidentiality for "examination questions, answers, papers, grades, and grading keys" used in licensing examinations administered by the Department of Business and Professional Regulation. And see s. 472.0201, F.S., providing a similar exemption for such records used in surveyor and mapper licensure by the Department of Agriculture and Consumer Services.

#### **(11) Home addresses and telephone numbers, photographs, family information**

As a rule, home addresses and telephone numbers of public officers and employees are not exempt from disclosure. See AGO 96-88 (home addresses and telephone numbers and business addresses and telephone numbers of members of state and district human rights advocacy committees are public records).

Section 119.071(4)(d), F.S., however, contains a number of exemptions for specified categories of public officials and employees and their families. For example, s. 119.071(4)(d)1.a., F.S., exempts from disclosure the home addresses, telephone numbers, photographs, and social security numbers of the following officers and employees, as well as the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such officers and personnel and the names and locations of the schools and day care facilities attended by their children; active or former law enforcement personnel, including correctional and correctional probation officers; Department of Children and Family Services personnel whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; Department of Health personnel whose duties are to support the investigation of child abuse or neglect; and Department of Revenue or local government personnel whose responsibilities include revenue collection and enforcement or child support enforcement.

A similar exemption for current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors is provided in s. 119.071(4)(d)1.d, F.S. See AGO 96-57 stating that the exemption for personnel of the Department of Revenue or local governments with revenue responsibilities requires that such duties include both revenue collection *and* enforcement responsibilities. The above exemption for telephone numbers of law enforcement officers, however, does not exempt from disclosure the cellular telephone number of telephones provided to law enforcement officers and used in performing law enforcement duties. See Inf. Op. to Laquidara, July 17, 2003.

Home addresses and telephone numbers of Florida Supreme Court justices and district court of appeal, circuit court, and county judges are exempt as are the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges and the names and locations of the schools and day care facilities attended by their children. Section 119.071(4)(d)1.c., F.S. A similar exemption exists for general magistrates, judges of compensation claims, administrative law

judges and child support enforcement hearing officers provided the officer has provided a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. Section 119.071(4)(d)1.e., F.S.

Home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35, F.S., as well as the names, home addresses, telephone numbers, and places of employment of spouses and children of such officers and personnel and the names and locations of the schools and day care facilities attended by their children, are exempt. Section 119.071(4)(d)1.b., F.S. A similar exemption exists for: 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 are exempt, s. 119.071(4)(d)1.f., F.S.; current or former code enforcement officers, s. 119.071(4)(d)1.g., F.S.; current and former juvenile probation and detention officers and supervisors, house parents and supervisors, group treatment leaders and supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice, s. 119.071(4)(d)1.i., F.S.; and current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel, s. 119.071(4)(d)1.j., F.S.

The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820, F.S., as well as the names and other identifying information about 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 disclosure requirements, *if* the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. Section 119.071(4)(d)1.h., F.S.

An agency that is the custodian of the personal information specified above but is not the employer of the officer, employee, justice, judge or other person, shall maintain the exempt status of the personal information only if the officer, employee, judge, other person, or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)2., F.S. See AGOs 05-38 (clerk of value adjustment board), 04-20 (request submitted to property appraiser), 04-18 (supervisor of elections), and 97-67 (clerk of court). *And see* AGO 05-38 (exemption "governs the protection of identifying information and does not discriminate as to the documents and records in which the information may be found"). See *also* Inf. Op. to Cook, December 22, 2008 (nothing in the statute indicates that such a written request may be made after a request for the public record has been made and generally, the date in determining whether a document is subject to disclosure is the date the public records request is made, making the law in effect on that date applicable).

It should be noted that the exemptions afforded by s. 119.071(4)(d), F.S., apply only to records held by a public agency or a private entity acting on behalf of a public

agency; it does not apply to or preclude a private company from releasing such information unless that company falls within the definition of "Agency" because it is acting on behalf of a public agency. Inf. Op. to Gomez, November 3, 2008.

Section 119.071(5)(i), F.S., provides an exemption for identification and location information, defined as the home address, telephone number and photograph of a current or former United States attorney, assistant United States attorney, United States Court of Appeals judge, United States district court judge or United States magistrate, as well as the home address, telephone number, photograph, and place of employment of the spouse or child or the name and location of the school or day care facility attended by the child of such attorney, judge or magistrate. The statute requires the attorney, judge or magistrate to submit to the agency having custody of such information a written request to exempt such information from public disclosure as well as a written statement that that he or she has made reasonable efforts to protect such information from being available to the public.

Section 395.3025(10), F.S., establishes that the home addresses, telephone numbers, and photographs of hospital or surgical center employees who provide direct patient care or security services, as well as specified information about the spouses and children of such employees, are confidential and exempt from disclosure requirements. The same information must also be held confidential by the facility upon written request by other employees who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family. Section 395.3025(11), F.S.

## **(12) Medical information**

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), F.S. Section 119.071(4)(b)1., F.S. Such information may be disclosed if the person or the person's legal representative provides written permission or pursuant to court order. *Id.* See AGO 98-17 (exemption "appears to extend to governmental employees the protection for personal medical records that is generally enjoyed by private sector employees").

While medical information of a prospective, current or former officer or employee of an agency is exempt, identifying information regarding participants in a school district's health insurance plan does not clearly constitute protected medical information. *Chandler v. School Board of Polk County*, No. 2008CA-004389 (Fla. 10th Cir. Ct. October 9, 2008). *And see* Inf. Op. to Dockery, November 10, 2008. Subsequent to the issuance of these opinions, the Legislature enacted an exemption for personal identifying information of a dependent child of a current or former officer or employee of an agency, whose dependent child (as defined in 409.2554, F.S.) is insured by the agency's group insurance plan. Section 119.071(4)(b)2., F.S. The exemption applies to personal identifying information held by an agency before, on, or after the effective date of this exemption. *Id.* While personal identifying information relating to the dependent

child's participation in an agency's group insurance plan is now confidential, personal identifying information relating to the current or former officer's or employee's participation in such plan is subject to disclosure.

Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information is exempt from s. 119.07(1), F.S. Section 760.50(5), F.S.

Patient medical records and medical claims records of current or former employees and eligible dependents enrolled in group insurance plans of specified governmental entities are confidential and exempt from s. 119.07(1), F.S.; such records shall not be furnished to any person other than the employee or the employee's legal representative, except as authorized in the subsection. Sections 110.123(9) (state employees), 112.08(7) (county or municipal employees), and 112.08(8) (water management district employees), F.S. See AGO 91-88, citing to *News-Press Company, Inc. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987), stating that the exemption applies broadly and is not limited solely to medical records filed in conjunction with an employee's participation in a group insurance plan; rather, the exemption applies to all medical records relating to employees enrolled in a group insurance plan. *And see* AGOs 94-78 (monthly printout of medical claims paid under city group health insurance plan that identifies the public employees who obtained medical services and the amounts of the claims, together with some account information, is exempt from public inspection), and 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees").

Public school system employee medical records are confidential and exempt from s. 119.07(1), F.S. Section 1012.31(3)(a)5., F.S.

If a city owns and operates a medical clinic for the use and benefit of its employees, the patient records at the clinic are confidential and may be released only upon the written consent of the patient or under the specific circumstances provided under Florida law. AGO 01-33. Under its duty to ensure the confidentiality of such records, the city may allow access to such records to city employees whose duties are related to the furnishing of medical services to the patient/employee. *Id.*

### **(13) Retiree names and addresses**

The names and addresses of retirees are confidential and exempt from s. 119.07(1), F.S., to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled or list form except to public agencies engaged in official business, to collective bargaining agents or to retiree organizations for official business use. Section 121.031(5), F.S. *And see* s. 121.4501(19), F.S. (personal identifying information regarding participants in the Public Employee Optional Retirement Program is exempt).

### **(14) Ridesharing information**

Any information provided to an agency for the purpose of forming ridesharing

arrangements, which reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, F.S., is exempt from public disclosure requirements. Section 119.071(5)(e), F.S.

## 7. Social security numbers

Section 119.071(5)(a)5., F.S., states that social security numbers held by an agency are confidential and exempt from public disclosure requirements; however, the exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemptions for such numbers. See, e.g., s. 193.114(5), F.S. (social security number submitted on an application for a tax exemption is confidential); and s. 119.071(4)(a), F.S. (social security numbers of current and former employees held by the employing agency are confidential and exempt from disclosure).

Disclosure to another agency or governmental agency is authorized if: expressly required by federal or state law or by court order; necessary for the agency to perform its duties and responsibilities; expressly authorized in writing by the individual to whom the social security number relates; made to comply with the federal Patriot Act, Pub. L. No. 107-56, or Presidential Executive Order 13224; for the administration of health benefits to agency employees or their dependents; for the administration of a pension fund administered for agency employees, deferred compensation plan or defined contribution plan; or for the administration of the Uniform Commercial Code by the Office of the Secretary of State. Section 119.071(5)(a)6., F.S. *Cf. Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal law does not authorize newspaper to obtain social security numbers in state teacher certification database).

Pursuant to s. 119.071(5)(a)7.b., F.S., an agency may not deny a commercial agency engaged in 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 as prescribed therein. "Commercial activity" is defined to mean the permissible uses set forth in the federal Driver's Privacy Protection Act of 1993, 18 U.S.C. ss. 2721 *et seq.*, the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 *et seq.*, 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. Section 119.071(5)(a)7.a.(I), F.S. 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 not identifiable by the commercial entity. *Id.* And see AGO 10-06, stating that while s. 119.071(5)(a)6. and 7., F.S., authorize the disclosure of social security numbers to commercial entities engaged in the commercial activities identified in the statute, these provisions authorize the agency holding social security numbers to request additional information that is reasonably necessary to verify the identity of the commercial entity and the specific purposes for which the social security numbers will be used.

Pursuant to s. 119.0714(1)(i), F.S., social security numbers held in court records are exempt as provided in s. 119.071(5)(a). Section 119.0714(2)(a) and (e)1., F.S., however, provide that until January 1, 2012, if a social security 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; after that date, such records are confidential and exempt as provided in s. 119.071(5)(a), F.S.

Social security numbers included in an official record 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 the holder's attorney or legal guardian; however, if such record is in electronic format, on or after January 1, 2011, the county recorder must use his or her best effort to keep the social security number confidential and exempt as provided for in s. 119.071(5)(a), F.S. Section 119.0714(3)(b), F.S. The holder of a social security 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 contained in that official record. Section 119.0714(3)(c), F.S. Cf. AGO 05-37, concluding that the clerk of court, in recording documents in the Official Records that are required to contain social security numbers, may not redact social security numbers or other confidential information upon receipt; however, the clerk is required to maintain the confidentiality of that information.

## **E. TO WHAT EXTENT MAY AN AGENCY REGULATE OR LIMIT INSPECTION AND COPYING OF PUBLIC RECORDS?**

### **1. May an agency impose its own restrictions on access to or copying of public records?**

#### **a. Agency-imposed restrictions invalid**

Section 119.07(1)(a), F.S., establishes a right of access to public records in plain and unequivocal terms:

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.

A custodian of public records may not impose a rule or condition of inspection which operates to restrict or circumvent a person's right of access. AGO 75-50. *See also Davis v. Sarasota County Public Hospital Board*, 480 So. 2d 203 (Fla. 2d DCA 1985), *review denied*, 488 So. 2d 829 (Fla. 1986) (person making a public records request under s. 119.07(1), F.S., entitled to see the actual nonexempt records of legal fees paid by the hospital board and not merely extracts from such records). *And see State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) ("requirement that persons with custody of public records allow records to be examined" at any reasonable time, under reasonable



conditions" is not unconstitutional as applied to public records custodian who was dilatory in responding to public records requests).

The custodian "is at all times responsible for the custody of the [public] records but when a citizen applies to inspect or make copies of them it is his duty to make provision for this to be done in such a manner as will accommodate the applicant and at the same time safeguard the records." *Fuller v. State ex rel. O'Donnell*, 17 So. 2d 607 (Fla. 1944). Thus, the right of inspection may not be frustrated or circumvented through indirect means such as the use of a code book. *State ex rel. Davidson v. Couch*, 158 So. 103, 105 (Fla. 1934) (right of inspection was "hindered and obstructed" by city "imposing conditions to the right of examination which were not reasonable nor permissible under the law"). *Accord* AGO 05-12 (city may not require the use of a code to review e-mail correspondence of city's police department and human resources department).

Accordingly, the "reasonable conditions" referred to in s. 119.07(1), F.S., do not include anything that would hamper or frustrate, directly or indirectly, a person's right of inspection and copying. The term "refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review." *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979). *See also State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905); and *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction).

Any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. *Tribune Company v. Cannella, supra* at 1077. A policy of a governmental agency cannot exempt it from the application of Ch. 119, F.S., a general law. *Douglas v. Michel*, 410 So. 2d 936, 938 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985). *Accord* AGO 92-09 (utilities commission not authorized to alter terms of Ch. 119, F.S.); and AGO 75-50 (local agency has no discretion to alter Ch. 119, F.S., requirements because the state possesses exclusive control over access, maintenance, retention and disposal of public records). *And see* AGO 90-04 (county official not authorized to assign county's rights to a public record as part of a settlement agreement compromising a lawsuit against the county).

## **b. Mail procedures**

The Public Records Act is applicable to letters or other documents received by a public official in his or her official capacity. AGO 77-141. As with other public records, upon receipt of a public records request for correspondence, the custodian should retrieve the records, review them for exemptions and allow public inspection of the nonexempt material. Mail addressed to the mayor or a city council member at City Hall and received at City Hall should not be forwarded unopened to the private residence of the mayor or council member, but rather the original or a copy of the mail that

constitutes a public record should be maintained at city offices. AGO 04-43.

### **c. Inspection at off-premises location**

A trial court erred when it failed to hold a hearing before denying a request to require a district to permit inspection at the district offices, rather than at an off-premises location. *James v. Loxahatchee Groves Water Control District*, 820 So. 2d 988 (Fla. 4th DCA 2002). The agency argued that it would be "disruptive" to require that the records inspection be conducted at its offices. *Id.* However, the appeals court ruled that a hearing should have been held to determine whether the requestor, who was in litigation with the district, should be allowed to view the records at the district offices, and if so, under what conditions. *Id.*

### **2. What individuals are authorized to inspect and receive copies of public records?**

Section 119.01, F.S., provides that "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by *any person*." (e.s.) A state citizenship requirement was deleted from the law in 1975. A public employee is a person within the meaning of Ch. 119, F.S. and, as such, possesses the same right of inspection as any other person. AGO 75-175. Likewise, a county is "any person" who is allowed to seek public records under Ch. 119, F.S. *Hillsborough County, Florida v. Buccaneers Stadium Limited Partnership*, No. 99-0321 (Fla. 13th Cir. Ct. February 5, 1999), *affirmed per curiam*, 758 So. 2d 676 (Fla. 2d DCA 2000).

Thus, "the law provides any member of the public access to public records, whether he or she be the most outstanding civic citizen or the most heinous criminal." *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997). "[A]s long as the citizens of this state desire and insist upon 'open government' and liberal public records disclosure, as a cost of that freedom public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws." *State v. Colby*, No. MM96-317A-XX (Fla. Highlands Co. Ct. May 23, 1996). "Even though a public agency may believe that a person or group are fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida." *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991). *And see Curry v. State*, 811 So. 2d 736, 741 (Fla. 4th DCA 2002) (defendant's conduct in making over 40 public records requests concerning victim constituted a "legitimate purpose," and thus cannot violate the speaking law "because the right to obtain the records is established by statute and acknowledged in the state constitution").

### **3. Must an individual show a "special interest" or "legitimate interest" in public records before being allowed to inspect or copy same?**

No. Chapter 119, F.S., requires no showing of purpose or "special interest" as a condition of access to public records. "The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act." *Curry v. State*, 811 So. 2d 736, 742 (Fla. 4th DCA 2002). *See also Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885, 886n.3 (Fla. 3d DCA 2005) ("generally, a

person's motive in seeking access to public records is irrelevant"); *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (petitioner's reasons for seeking access to public records "are immaterial"); *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985) (legislative objective underlying the creation of Ch. 119 was to insure to the people of Florida the right freely to gain access to governmental records; the purpose of such inquiry is immaterial); and *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) ("the newspaper's motives [for seeking the documents], as well as the hospital's financial harm and public harm defenses, are irrelevant in an action to compel compliance with the Public Records Act").

"[T]he fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida's public records law." *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005). *See also State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905) (abstract companies may copy documents from the clerk's office for their own use and sell copies to the public for a profit); *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 228n.2 (Fla. 3d DCA 1998), *review denied*, 729 So. 2d 389 (Fla. 1999) ("Booksmart's reason for wanting to view and copy the documents is irrelevant to the issue of whether the documents are public records"). *Cf.* Fla. R. Jud. Admin. 2.420(i)(1), stating that a person requesting records of the judicial branch is not required to disclose the reason for the request. *Accord Tedesco v. State*, 807 So. 2d 804, 806 (Fla. 4th DCA 2002) (no requirement that any person show a "need" in order to obtain public records of the judicial branch).

Section 817.568, F.S., provides criminal penalties for the unauthorized use of personal identification information for fraudulent or harassment purposes. Criminal use of a public record or public records information is proscribed in s. 817.569, F.S.

#### **4. What agency employees are responsible for responding to public records requests?**

Section 119.011(5), F.S., defines the term "custodian of public records" to mean "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." However, the courts have concluded that the statutory reference to the records custodian does not alter the "duty of disclosure" imposed by s. 119.07(1), F.S., upon "[e]very person who has custody of a public record." *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996). [Emphasis supplied by the court].

Thus, the term "custodian" for purposes of the Public Records Act refers to all agency personnel who have it within their power to release or communicate public records. *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4th DCA 1998) (citing *Williams v. City of Minneola*, 575 So. 2d 683, 687 [Fla. 5th DCA 1991]). But, "the mere fact that an employee of a public agency temporarily possesses a document does not necessarily mean that the person has custody as defined by section 119.07." *Id.* at

1361. In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping or guardianship. *Id.* And see *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002), noting that "only the custodian" of agency personnel records may assert any applicable statutory exemption to disclosure, "not the employee."

The 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. Section 119.07(1)(b), F.S. The 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. Section 119.07(1)(c), F.S. 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. *Id.* Cf. *Remia v. City of St. Petersburg Police Pension Board of Trustees*, 14 F.L.W. Supp. 854a (Fla. 6th Cir. Ct. July 17, 2007), *cert. denied*, 996 So. 2d 860 (Fla. 2d DCA 2008) (since city clerk's responsibility to provide public records was ministerial, city was not entitled to protective order prohibiting attorney in litigation with the city from directly contacting the clerk with a public records request without first contacting the city attorney).

**5. May an agency refuse to comply with a request to inspect or copy the agency's public records on the grounds that the records are not in the physical possession of the custodian?**

No. An agency is not authorized to refuse to allow inspection of public records it made or received in connection with the transaction of official business on the grounds that the documents are in the actual possession of an agency or official other than the records custodian. See *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (public records cannot be hidden from the public by transferring physical custody of the records to the agency's attorneys); *Tober v. Sanchez*, 417 So. 2d 1053 (Fla. 3d DCA 1982), *review denied sub nom.*, *Metropolitan Dade County Transit Agency v. Sanchez*, 426 So. 2d 27 (Fla. 1983) (official charged with maintenance of records may not transfer actual physical custody of records to county attorney and thereby avoid compliance with request for inspection under Ch. 119, F.S.); and A GO 92-78 (public housing authority not authorized to withhold its records from disclosure on the grounds that the records have been subpoenaed by the state attorney and transferred to that office).

Thus, in *Barfield v. Florida Department of Law Enforcement*, No. 93-1701 (Fla. 2d Cir. Ct. May 19, 1994), the court held that an agency that received records from a private entity in the course of official business and did not make copies of the documents could not "return" them to the entity following receipt of a public records request. The court ordered the agency to demand the return of the records from the private entity so they could be copied for the requestor.

Similarly, in *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 492-493 (Fla. 2d DCA 1990), the court found that both the city and a private entity violated the Public Records Act when, pursuant to a plan to circumvent Ch. 119, F.S.,

the city avoided taking possession of negotiation documents reviewed and discussed by both parties and instead left them with the private entity's attorney. The court determined that although city officials may have intended merely to "avoid" the law, the effect of their actions was to "evade the broad policy of open government." *And see Wisner v. City of Tampa Police Department*, 601 So. 2d 296, 298 (Fla. 2d DCA 1992) (city may not allow a private entity to maintain physical custody of public records [polygraph chart used in internal investigation] "to circumvent the public records chapter"); and *National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), (records on private entity's secure website that were viewed and used by a state university in carrying out its official duties were public records even though the university did not take physical possession).

If municipal pension records are stored in a records storage facility outside city limits, the city may not pass along to the public records requestor the costs to retrieve the records. *Inf. Op. to Sugarman*, September 5, 1997. Any delay in production of the records beyond what is reasonable under the circumstances may subject the custodian to liability for failure to produce public records. *Id.* *And see* AGO 02-37 (agency not authorized to require that production and copying of public records be accomplished only through a private company that acts as a clearinghouse for the agency's public records information pursuant to a contract between the agency and the private company).

While Ch. 119, F.S., does not require a county to transport microfilmed copies of public records maintained in a storage facility outside the county to the county courthouse when the originals are available at the courthouse, the microfilmed copies must be available for copying at their location outside the county. AGO 88-26. *See also* AGO 92-85, stating that individual school board members are not required to retain copies of public records which are regularly maintained in the course of business by the clerk of the school board in the school board administrative offices.

Pursuant to Ch. 119, F.S., public records may routinely be removed from the building or office in which such records are ordinarily kept only for official purposes. AGO 93-16. The retention of such records in the home of a public official, however, would appear to circumvent the public access requirements of the Public Records Act and compromise the rights of the public to inspect and copy such records. *Id.* *See s.* 119.021, F.S. *And see* AGO 04-43 (mail addressed to city officials at City Hall and received at City Hall should not be forwarded unopened to the private residences of the officials, but rather the original or a copy of the mail that constitutes a public record should be maintained at city offices).

## **6. May an agency refuse to allow access to public records on the grounds that the records are also maintained by another agency?**

No. The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption. AGO 86-69. If information contained in the public record is available from other sources, a person seeking access to the record is not

required to make an unsuccessful attempt to obtain the information from those sources as a condition precedent to gaining access to the public records. *Warden v. Bennett*, 340 So. 2d 977, 979 (Fla. 2d DCA 1976).

**7. May an agency refuse to allow inspection or copying of public records on the grounds that the request for such records is "overbroad" or lacks particularity?**

No. In *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985), the court recognized that the "breadth of such right [to gain access to public records] is virtually unfettered, save for the statutory exemptions . . . ." Accordingly, in the absence of a statutory exemption, a custodian must produce the records requested regardless of the number of documents involved or possible inconvenience. Note, however, s. 119.07(4)(d), F.S., authorizes a custodian to charge, in addition to the cost of duplication, a reasonable service charge for the cost of the extensive use of information technology resources or of personnel, if such extensive use is required because of the nature or volume of public records to be inspected or copied. *And see* AGO 92-38 (agency may not restrict access to and copying of public records based upon the amount requested or the span of time which is covered by the public records; however, if extensive use of information technology resources or clerical or supervisory personnel is needed for retrieval of such records, the agency may impose a reasonable service charge pursuant to former s. 119.07[1][b] [now s. 119.07(4)(d), F.S.], based upon the actual costs incurred for the use of such resources or personnel).

Thus, a person seeking to inspect "all" financial records of a municipality may not be required to specify a particular book or record he or she wishes to inspect. *State ex rel. Davidson v. Couch*, 156 So. 297, 300 (Fla. 1934). In *Davidson*, the Florida Supreme Court explained that if this were the case, "one person may be required to specify the book, while another and more favored one, because of his pretended ignorance of the name of the record might be permitted examination of all of them." *Id.* Such a result would be inconsistent with the mandate in the Public Records Act that public records are open to all who wish to inspect them. *Id. Cf. Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991), stating that if a public records request is insufficient to identify the records sought, the city has an affirmative duty to promptly notify the requestor that more information is needed in order to produce the records; it is the responsibility of the city and not the requestor to follow up on any requests for public records. *Compare Woodard v. State*, 885 So. 2d 444, 446 (Fla. 4th DCA 2004) (records custodian must furnish copies of records when the person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record and forwards the statutory fee).

**8. May an agency require that a request to examine or copy public records be made in writing?**

Chapter 119, F.S., does not authorize an agency to require that requests for records be in writing. *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 305n.1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that

requests for records must be in writing"). As noted in AGO 80-57, a custodian must honor a request for copies of records which is sufficient to identify the records desired, whether the request is in writing, over the telephone, or in person, provided that the required fees are paid.

If a public agency believes that it is necessary to provide written documentation of a request for public records, the agency may require that the *custodian* complete an appropriate form or document; however, the person requesting the records cannot be required to provide such documentation as a precondition to the granting of the request to inspect or copy public records. See *Sullivan v. City of New Port Richey*, No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 1987), *per curiam affirmed*, 529 So. 2d 1124 (Fla. 2d DCA 1988), noting that a defendant's failure to complete a city form required for access to documents did not authorize the custodian to refuse to honor the request to inspect or copy public records.

However, a request for records of the *judicial* branch (which is not subject to Ch. 119, F.S., see *Times Publishing Company v. Ake*, 660 So. 2d 255 [Fla. 1995]), must be in writing. Rule 2.420(i)(1), Fla. R. Jud. Admin. In its commentary accompanying the rule change that incorporated this requirement, the Court said that the "writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing." *In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002).

#### **9. May an agency require that the requestor furnish background information to the custodian?**

A person requesting access to or copies of public records may not be required to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records. AGOs 92-38 and 91-76. See also *Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself). Cf. s. 10.12.31(2)(f), F.S., providing that the custodian of public school employee personnel files shall maintain a record in the file of those persons reviewing an employee personnel file each time it is reviewed.

#### **10. Is an agency required to: answer questions about its public records; create a new record in response to a request for information; or reformat its records in a particular form as demanded by the requestor?**

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records" provided that the required fees are paid. Section 119.07(1)(a) and (4), F.S. However, a custodian is not required to give out *information* from the records of his or her office. AGO 80-57. The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. AGO 92-38. Cf. *In re*

*Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002) (the custodian of judicial records "is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request").

In other words, Ch. 119, F.S., provides a right of access to inspect and copy an agency's existing public records; it does not mandate that an agency create new records in order to accommodate a request for information from the agency. Thus, the clerk of court is not required to provide an inmate with a list of documents from a case file which may be responsive to some forthcoming request. *Wootton v. Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991). However, in order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests by mail for information as to copying costs. *Id.* See also *Woodard v. State*, 885 So. 2d 444, 445n.1 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total copying cost of the requested records; *cf. Gilliam v. State*, 996 So. 2d 956 (Fla. 2d DCA 2008) (clerk, as custodian of judicial records, had a legal duty to respond to Gilliam's request for information regarding costs).

Similarly, an agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. AGO 08-29. As explained in *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983):

If the health department maintains a chronological list of dog-bite incidents with rabies implications [a] plaintiff, bitten by a suspect dog, may not require the health department to reorder that list and furnish a record of incidents segregated by geographical areas. Nothing in the statute, case law or public policy imposes such a burden upon our public officials.

However, an agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium. Section 119.01(2)(f), F.S. Thus, a custodian of public records must, if asked for a copy of a computer software disk used by an agency, provide a copy of the disk in its original format; a typed transcript would not satisfy the requirements of s. 119.07(1), F.S. AGO 91-61. *Cf. Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (fact that pertinent information may exist in more than one format is not a basis for exemption or denial of the request).

## **11. When must an agency respond to a public records request?**

The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. Section 119.07(1)(c), F.S. The Public Records Act, however, does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. The Florida Supreme Court has stated that the only delay in producing records permitted under Ch. 119, F.S., "is the limited reasonable time allowed the



custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985).

#### **a. Automatic delay impermissible**

A municipal policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078-1079 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985). See also *Michel v. Douglas*, 464 So. 2d 545, 546 at n.2 (Fla. 1985), wherein the Supreme Court noted that a county resolution imposing a 24-hour waiting period before allowing inspection of county personnel records which had been upheld in an earlier appellate decision [*Roberts v. News-Press Publishing Company, Inc.*, 409 So. 2d 1089 (Fla. 2d DCA), *review denied*, 418 So. 2d 1280 (Fla. 1982)], was no longer enforceable in light of subsequent judicial decisions.

Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his or her records. *Tribune Company v. Cannella*, 458 So. 2d at 1078. Compare s. 1012.31(3)(a)3., F.S., in which the Legislature has expressly provided that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified as prescribed by statute.

Similarly, the Attorney General's Office has advised that a board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote. AGO 96-55. And see *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-798 (Fla. April 20, 2010) (city may not delay public access to board meeting minutes until after the city commission has approved the minutes).

#### **b. Delay in response**

An agency's unreasonable and excessive delays in producing public records can constitute an unlawful refusal to provide access to public records. See *Rechler v. Town of Manalapan*, No. CL 94-2724 AD (Fla. 15th Cir. Ct. November 21, 1994), *affirmed*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996), *review denied*, 684 So. 2d 1353 (Fla. 1996), finding that the town engaged in a "pattern of delays" by taking months to fully comply with the petitioner's public records requests.

Similarly, in *State v. Webb*, 786 So. 2d 602, 604 (Fla. 1st DCA 2001), the court held that it was error for a lower court judge to vacate a misdemeanor conviction of a records custodian (Webb) who had been found guilty of willfully violating s. 119.07(1)(a), F.S., based on her "dilatatory" response to public records requests filed by a citizen (Watson):

Evidence was presented that Webb took one and one-half months to respond to Watson's initial public-records request; that it was nearly four months before Webb attempted to schedule a time for Watson to review documents responsive to the requests; that Webb gave Watson one hour to review a ten-inch stack of documents and then allowed only two additional one-hour

sessions five weeks later; that Webb terminated Watson's review after this third session; and that Webb did not provide all of her public records until she received a request from the grand jury nearly seven months after Watson's request.

By contrast, in *Lang v. Reedy Creek Improvement District*, No. CJ-5546 (Fla. 9th Cir. Ct. October 2, 1995), *affirmed per curiam*, 675 So. 2d 947 (Fla. 5th DCA 1996), the circuit court rejected the petitioner's claim that the agency should have produced requested records within 10, 20 and 60-day periods. The court determined that the agency's response to numerous (19) public records requests for 135 categories of information and records filed by the opposing party in litigation was reasonable in light of the cumulative impact of the requests and the fact that the requested records contained exempt as well as nonexempt information and thus required a considerable amount of review and redaction. *And see Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), in which the court said that in view of the "nature and volume of the materials requested [over 9000 pages], their location, and the need for close supervision by some knowledgeable person of the review of those records for possible exemptions," the amount of time expended by the county to produce the records (several weeks) to opposing counsel was not unreasonable.

### **c. Arbitrary time for inspection**

While an agency may restrict the hours during which public records may be inspected to those hours when the agency is open to the public, a custodian is not authorized to establish an arbitrary time period during which records may or may not be inspected. AGO 81-12. Thus, an agency policy which permits inspection of its public records only from 1:00 p.m. to 4:30 p.m., Monday through Friday, violates the Public Records Act. *Inf. Op. to Riotte*, May 21, 1990. There may be instances where, due to the nature or volume of the records requested, a delay based upon the physical problems in retrieving the records and protecting them is necessary; however, the adoption of a schedule in which public records may be viewed only during certain hours is impermissible. *Id.*

### **d. Standing requests**

The Florida Attorney General's Office has stated that upon receipt of a public records request, the agency must comply by producing all non-exempt documents in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Chapter 119, F.S. However, this mandate applies only to those documents in the custody of the agency at the time of the request; nothing in the Public Records Law appears to require that an agency respond to a so-called "standing" request for production of public records that it may receive in the future. See *Inf. Op. to Worch*, June 15, 1995.

**12. In the absence of express legislative authorization, may an agency refuse to allow public records made or received in the normal course of business to be inspected or copied if requested to do so by the maker or sender of the document?**

No. To allow the maker or sender of documents to dictate the circumstances under which the documents are to be deemed confidential would permit private parties as opposed to the Legislature to determine which public records are subject to disclosure and which are not. Such a result would contravene the purpose and terms of Ch. 119, F.S. See *Gadd v. News-Press Publishing Company*, 412 So. 2d 894 ( Fla. 2d DCA 1982) (records of a county hospital's utilization review committee were not exempt from Ch. 119, F.S., even though the information may have come from sources who expected or were promised confidentiality); *Browning v. Walton*, 351 So. 2d 380 ( Fla. 4th DCA 1977) ( city cannot refuse to allow inspection of records containing the names and addresses of city employees who filled out forms requesting that city maintain the confidentiality of all material in their personnel files); *City of Pinellas Park, Florida v. Times Publishing Company*, No. 00-008234CI-19 ( Fla. 6th Cir. Ct. January 3, 2001) ("there is absolutely no doubt that promises of confidentiality [given to employees who were asked to respond to a survey] do not empower the Court to depart from the public records law"). And see *Hill v. Prudential Insurance Company of America*, 701 So. 2d 1218 ( Fla. 1st DCA 1997), review denied, 717 So. 2d 536 ( Fla. 1998) ( materials obtained by state agency from a nonymous sources during its investigation of a n insurance company were public records subject to disclosure in the absence of statutory exemption, notwithstanding the company's contention that the records were "stolen" or "misappropriated" privileged documents that were delivered to the state without the company's permission). Compare *Doe v. State*, 901 So. 2d 881 ( Fla. 4th DCA 2005) (where citizen provided information to state attorney's office which led to a criminal investigation was justified in inferring or had a reasonable expectation that he would be treated as a confidential source in accordance with statutory exemption now found at s. 119.071[2][f], F.S., the citizen was entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney's office).

Thus, it has been held that an agency "cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements." *The Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 ( Fla. 10th Cir. Ct. August 19, 1991), stating that a confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act. Cf. s. 69.081(8), F.S., part of the "Sunshine in Litigation Act," providing, subject to certain exceptions, that any portion of an agreement which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced, and requiring that settlement records be maintained in compliance with Ch. 119, F.S. And see Inf. Op. to Barry, June 24, 1998, citing to s. 69.081(8)(a), and stating that "a state agency may not enter into a settlement agreement or other contract which contains a provision authorizing the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file." See also *National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 ( Fla. 1st DCA 2009), review denied, 37 So. 3d 848 ( Fla. 2010), holding that a confidentiality agreement entered into by a private law firm on behalf of a state university with the NCAA that allowed access to records contained on the NCAA's secure custodial website that were used by the university in preparing a response to

possible NCAA sanctions, had no impact on whether such records were public records, stating that "[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private."

Accordingly, it is clear that the determination as to when public records are to be deemed confidential rests exclusively with the Legislature. See *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003), review denied sub nom., *Crist v. Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005) (private party cannot render public records exempt from disclosure merely by designating as confidential the material it furnishes to a state agency). See also AGO 90-104 (desire of data processing company to maintain "privacy" of certain materials filed with Department of State is of no consequence unless such materials fall within a legislatively created exemption to Ch. 119, F.S.); AGO 71-394 (reports received and marked "confidential" or "return to sender" must be open to public inspection unless exempted from disclosure by the Legislature); AGO 97-84 (architectural and engineering plans under seal pursuant to s. 481.221 or s. 471.025, F.S., that are held by a public agency in connection with the transaction of official business are subject to public inspection); and Inf. Op. to Echeverri, April 30, 2010 (taxpayer may not request that records submitted to value adjustment board be kept confidential). Cf. Inf. Op. to Burke, April 14, 2010 (state licensing board must determine whether letter, although allegedly sent to the board by mistake, was received in connection with the transaction of board business).

Therefore, unless the Legislature has expressly authorized the maker of documents received by an agency to keep the material confidential, the wishes of the sender in this regard cannot supersede the requirements of Ch. 119, F.S. Compare, e.g., s. 377.2409(1), F.S. (information on geophysical activities conducted on state-owned mineral lands received by Department of Environmental Protection shall, on the request of the person conducting the activities, be held confidential and exempt from Ch. 119, F.S., for 10 years).

### **13. Must an agency state the basis for its refusal to release an exempt record?**

Yes. Section 119.07(1)(e), F.S., states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f), F.S. See *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000) (agency's response that it had provided all records "with the exception of certain information relating to the victim" deemed inadequate because the response "failed to identify with specificity either the reasons why records were believed to be exempt, or the statutory basis for any exemption"); and *Langlois v. City of Deerfield Beach, Florida*, 370 F. Supp 2d 1233 (S.D. Fla. 2005) (city fire chief's summary rejection of request for employee personnel file violated the Public Records Act because the chief gave no statutory reason for failing to produce the records). Cf. *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), noting that the Public Records Act "may not be used in such a way to obtain information that the legislature has declared must be exempt

from disclosure"; and AGO 06-04 (request for agency records may not be phrased or responded to in terms of a request for the specific documents asked for and received by a law enforcement agency during the course of an active criminal investigation).

It has been held that a *federal* agency subject to the federal Freedom of Information Act, 5 U.S.C. s. 552, must, in addition to providing a detailed justification of the basis for claimed exemptions under the Act, specifically itemize and index the documents involved so as to show which are disclosable and which are exempt. *See Vaughn v. Rosen*, 484 F.2d 820, 827-828 (D.C. Cir. 1973), *cert. denied*, 94 S.Ct. 1564 (1974). However, a Florida court refused to apply the *Vaughn* requirements to the state Public Records Act; and *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985). *And see Lopez v. State*, 696 So. 2d 725 (Fla. 1997) (state attorney's contention that requested records were work product and not subject to public records disclosure was sufficient to identify asserted statutory exemptions).

#### **14. May an agency refuse to allow inspection and copying of an entire public record on the grounds that a portion of the record contains information which is exempt from disclosure?**

No. Where a public record contains some information which is exempt from disclosure, s. 119.07(1)(d), F.S., requires the custodian of the record to delete or excise only that portion or portions of the record for which an exemption is asserted and to provide the remainder of the record for examination. *See Ocala Star Banner Corp. v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may redact confidential identifying information from police report but must produce the rest for inspection); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) (police department authorized to withhold statutorily exempt criminal investigative information but must allow inspection of nonexempt portions of the records); and AGO 95-42 (statute providing for confidentiality of certain audit information did not make the entire report confidential and exempt from disclosure; the portions of the report which do not contain exempt information must be released).

The fact that an agency believes that it would be impractical or burdensome to redact confidential information from its records does not excuse noncompliance with the mandates of the Public Records Act. AGO 99-52. *Cf.* AGO 02-73 (agency must redact confidential and exempt information and release the remainder of the record; agency not authorized to release records containing confidential information, albeit anonymously).

A custodian of records containing both exempt and nonexempt material may comply with s. 119.07(1)(d), F.S., by any reasonable method which maintains and does not destroy the exempted portion while allowing public inspection of the nonexempt portion. AGO 84-81. *And see* AGO 97-67 (clerk is under a duty to prevent the release of confidential material that may be contained in the Official Records; the manner by which this is to be accomplished rests within the sound discretion of the clerk). *Accord* AGO 05-37.

Section 119.011(12), F.S., defines the term "redact" to mean "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." See AGO 02-69 (statute providing for redaction of certain information in court records available for public inspection does not authorize clerk of court to permanently remove or obliterate such information from the original court records).

### **15. May an agency refuse to allow inspection of public records because the agency believes disclosure could violate privacy rights?**

It is well established in Florida that "neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency." *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

In reaching the conclusion that public records must be open to public inspection unless the Legislature provides otherwise, the courts have rejected claims that the constitutional right of privacy bars disclosure. Article I, s. 23, Fla. Const., provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's 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 meetings as provided by law.* (e.s.)

Accordingly, the Florida Constitution "does not provide a right of privacy in public records" and a state or federal right of disclosure privacy does not exist. *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985). See also *Forsberg v. Housing Authority of City of Miami Beach*, 455 So. 2d 373 (Fla. 1984); and AGO 09-19 (to extent that information on an agency's Facebook page constitutes a public record within the meaning of Ch. 119, F.S., Art. I, s. 23, Fla. Const., "is not implicated"). "[I]n Florida the right to privacy is expressly subservient to the Public Records Act." *Board of County Commissioners of Palm Beach County v. D.B.*, 784 So. 2d 585, 591 (Fla. 4th DCA 2001). *But see Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992) (public's right of access to pretrial criminal discovery materials must be balanced against a nonparty's constitutional right to privacy).

However, in *Times Publishing Company v. A.J.*, 626 So. 2d 1314 (Fla. 1993), the Supreme Court blocked the release of a sheriff's initial incident report of alleged child abuse that was referred to the child welfare department for investigation pursuant to state child protection laws. Noting that the department found no probable cause, the Court held that the confidentiality provisions in Ch. 415, F.S. 1990 [now found in Ch. 39, F.S.], are intended to accommodate the privacy rights of those involved in these cases "during the initial stages of an investigation before probable cause has been found." *Id.* at 1315. Additionally, the Court held that a member of the class the exception was intended to protect--*i.e.*, the minor children who were the subject of the child abuse incident report--had standing to assert a statutory exception. *Cf. Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002), noting that "only the custodian" of agency personnel records "can assert any applicable exemption; not

the employee." Although the statutes did not require the sheriff to notify third parties about the public records request, the Court could not fault the sheriff for providing such notification. *Times Publishing Company v. A.J.*, *supra* at 1316. *Cf. Tribune Company v. Cannella*, *supra* (automatic delay in production of personnel records to allow employees time to assert constitutional privacy interests invalid). In a lengthy footnote, however, the Court cautioned that its ruling addressed only the factual question of a statutory exception relating to child abuse, and did not necessarily apply in any other context. *Times Publishing v. A.J.*, *supra* at 1315n.1. *Cf. AGO 94-47*, regarding the application of the *Times Publishing Company* standard to complaints of abuse filed with a human rights advocacy committee.

## **16. What is the liability of a custodian for release of public records?**

Nothing in Ch. 119, F.S., indicates an intent to give private citizens a right to recovery for an agency negligently maintaining and providing information from public records. *City of Tarpon Springs v. Garrigan*, 510 So. 2d 198 (Fla. 2d DCA 1987); *Friedberg v. Town of Longboat Key*, 504 So. 2d 52 (Fla. 2d DCA 1987). *Cf. Layton v. Florida Department of Highway Safety and Motor Vehicles*, 676 So. 2d 1038 (Fla. 1st DCA 1996) (agency has no common law or statutory duty to citizen to maintain accurate records). *Accord Hillsborough County v. Morris*, 730 So. 2d 367 (Fla. 2d DCA 1999).

However, a custodian is not protected against tort liability resulting from that person *intentionally* communicating public records or their contents to someone outside the agency which is responsible for the records unless the person inspecting the records has made a bona fide request to inspect the records or the communication is necessary to the agency's transaction of its official business. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991). On appeal, after remand, the Fifth District held the claim against the city was barred on the basis of sovereign immunity. *Williams v. City of Minneola*, 619 So. 2d 983 (Fla. 5th DCA 1993). *Cf. AGO 97-09* (law enforcement agency's release of sexual offender records for purposes of public notification is consistent with its duties and responsibilities).

## **F. WHAT IS THE LEGAL EFFECT OF STATUTORY EXEMPTIONS FROM DISCLOSURE?**

### **1. How are exemptions created?**

"Courts cannot judicially create any exceptions, or exclusions to Florida's Public Records Act." *Board of County Commissioners of Palm Beach County v. D.B.*, 784 So. 2d 585, 591 (Fla. 4th DCA 2001). *Accord Wait v. Florida Power and Light Company*, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). See s. 119.011(8), F.S., defining the term "exemption" to mean "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."

Article I, s. 24(c), Fla. Const., authorizes the *Legislature* to enact general laws creating exemptions provided that such laws "shall state with specificity the public

necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." See *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999), in which the Court refused to "imply" an exemption from open records requirements, stating "we believe that an exemption from public records access is available only after the legislature has followed the express procedure provided in article I, section 24(c) of the Florida Constitution." *Accord Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233, 237 (Fla. 4th DCA 2000) ("Only after the legislature provided by general law for the exemption of records, stating with specificity the public necessity for the exemption and providing that the law was no broader than necessary, would an exemption from public records access be available."). And see *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 395 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (statutory exemption for autopsy photographs serves identifiable public purpose and is no broader than necessary to meet that public purpose); *Bryan v. State*, 753 So. 2d 1244 (Fla. 2000) (statute exempting from public disclosure certain prison records satisfies the constitutional standard because the Legislature set forth the requisite public necessity [personal safety of prison officials and inmates] for the exemption). Compare *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (statute providing an exemption from the Sunshine Law for portions of hospital board meetings is unconstitutional because it does not meet the constitutional standard of specificity as to stated public necessity and it is broader than necessary to achieve its purpose).

Laws enacted pursuant to Art. I, s. 24, Fla. Const., shall relate to one subject and must contain only exemptions or provisions governing enforcement. *Cf. State v. Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995) (while exemptions when enacted must contain a public necessity statement, exceptions to an exemption are not required to contain such a statement; thus, a trial judge erred in overturning a statute providing a limited exception to the public records exemption for grand jury materials).

Article I, s. 24(c) also requires that laws providing exemptions from public records or public meetings requirements must be passed by a two-thirds vote of each house. The two-thirds vote requirement applies when an exemption is readopted in accordance with the Open Government Sunset Review Act, s. 119.15, F.S., as well as to the initial creation of an exemption. AGO 03-18.

In accordance with s. 24(d), all statutory exemptions in effect on July 1, 1993, are grandfathered into the statutes and remain in effect until they are repealed. Rules of court in effect on November 3, 1992, that limit access to records remain in effect until repealed. See Rule 2.420, Public Access to Judicial Branch Records, Fla. R. Jud. Admin. (originally adopted by the Florida Supreme Court on October 29, 1992, as Rule 2.051, and subsequently renumbered in 2006 as Rule 2.420). The text of this rule is set forth in Appendix E.

The Open Government Sunset Review Act, codified at s. 119.15, F.S., provides for the review and repeal or reenactment of an exemption from s. 24, Art. I, Fla. Const., and s. 119.07(1), or s. 286.011, F.S. The act does not apply to an exemption that is required by federal law or applies solely to the Legislature or the State Court System. Section



119.15(2)(a) and (b), F.S. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S.

## **2. Exemptions are strictly construed**

The general purpose of Ch. 119, F.S., "is to open public records to allow Florida's citizens to discover the actions of their government." *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1366 (Fla. 4th DCA 1997). The Public Records Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *Krischer v. D'Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So. 2d 1000, 1002 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987). See also *Southern Bell Telephone and Telegraph Company v. Beard*, 597 So. 2d 873, 876 (Fla. 1st DCA 1992) ("Public Service Commission's determination that statutory exemption for proprietary confidential business information should be narrowly construed and did not apply to company's internal self-analysis was "consistent with the liberal construction afforded the Public Records Act in favor of open government").

An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. See *Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001); *Barfield v. City of Fort Lauderdale Police Department*, 639 So. 2d 1012, 1015 (Fla. 4th DCA), *review denied*, 649 So. 2d 869 (Fla. 1994); and *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128, 1130 (Fla. 1st DCA 1985). See also *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 780n.1 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986); *Tribune Company v. Public Records*, *supra*, stating that doubt as to the applicability of an exemption should be resolved in favor of disclosure rather than secrecy. And see *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 492, noting that the judiciary cannot create a privilege of confidentiality to accommodate the desires of government and that "[a]n open government is crucial to the citizens' ability to adequately evaluate the decisions of elected and appointed officials"; rather the "right to access public documents is virtually unfettered, save only the statutory exemptions designed to achieve a balance between an informed public and the ability of the government to maintain secrecy in the public interest." *Accord* AGO 80-78 ("policy considerations" do not, standing alone, justify nondisclosure of public records).

## **3. Do newly-created exemptions apply retroactively?**

Access to public records is a substantive right. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001). Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *Id.* In *Memorial*, the Supreme Court ruled that a statute providing an exemption from open government requirements for meetings and records of private corporations leasing hospitals from public taxing authorities did not apply to

records created prior to the effective date of the statute. *See also Baker County Press, Inc. v. Baker County Medical Services*, 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004) (generally, the critical date in determining whether a document is subject to disclosure is the date the public records request is made; the law in effect on that date applies).

However, if the Legislature is "clear in its intent," an exemption may be applied retroactively. *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (statute exempting autopsy photographs from disclosure is remedial and may be retroactively applied). *See also City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986); and *Roberts v. Butterworth*, 668 So. 2d 580 (Fla. 1996). *Cf. Cebrian By and Through Cebrian v. Klein*, 614 So.2d 1209 (Fla. 4th DCA 1993) (amendment to child abuse statute limiting access to unfounded reports was remedial in nature and therefore applied retroactively); and AGO 94-70 (amendment to expungement statute appears to be remedial and, therefore, should be retroactively applied to those records ordered expunged prior to the effective date of the amendment).

#### **4. Do statutes eliminating confidentiality apply retroactively?**

In *Baker v. Eckerd Corporation*, 697 So. 2d 970 (Fla. 2d DCA 1997), the court held that an amendment *eliminating* protection against disclosure of any unfounded reports of child abuse applies *prospectively* from the effective date of the amendment. *See also* AGO 95-19 (expanded disclosure provisions for juvenile records apply only to records created after the effective date of the amendment); and *Coventry First, LLC v. Office of Insurance Regulation*, 30 So. 3d 552 (Fla. 1st DCA 2010) (although intended to apply retroactively, statutory amendment imposing a time limitation on the exempt status of certain records submitted to an agency applied prospectively since retroactive application improperly deprived company of its vested property rights in records already submitted to the agency).

Records made before the date of a repeal of an exemption under s. 119.15, F.S., the Open Government Sunset Review Act, "may not be made public unless otherwise provided by law." Section 119.15(7), F.S.

#### **5. Are records which are confidential and exempt from disclosure treated differently from those which are merely exempt from disclosure requirements?**

##### **a. Confidential records**

There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Act and confidential. *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004). If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute. *Id.* And see AGOs 04-09 and 86-97.

However, a statute restricting release of confidential emergency call information

does not prevent the city's attorneys or other city officials who are responsible for advising the city regarding the provision of emergency medical services or for defending the city against a possible claim arising from such services, from reviewing the records related to such emergency calls that contain patient examination or treatment information. AGO 95-75.

An agency is authorized to take reasonable steps to ensure that confidential records are not improperly released. *Lee County v. State Farm Mutual Automobile Insurance Company*, 634 So. 2d 250, 251 (Fla. 2d DCA 1994) (county policy requiring the patient's notarized signature on all release forms for emergency services medical records "not unreasonable or onerous;" requirement was a valid means of protecting records made confidential by s. 401.30[4], F.S.). *Accord* AGO 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees"). *Cf. Florida Department of Revenue v. WHI Limited Partnership*, 754 So. 2d 205 (Fla. 1st DCA 2000) (administrative law judge [ALJ] not authorized to mandate that agency disclose confidential records because ALJ is not a judge of a court of competent jurisdiction for purposes of statute permitting disclosure of confidential records in response "to an order of a judge of a court of competent jurisdiction"); and AGO 94-86 (if custodian of confidential library circulation records believes that such records should not be disclosed in response to a subpoena because the subpoena is not a "proper judicial order" as provided in s. 257.261, F.S., custodian may assert the confidentiality provisions in a motion to quash the subpoena but should not ignore the subpoena for production of such records).

## **b. Exempt records**

If records are not made confidential but are simply exempt from the mandatory disclosure requirements in s. 119.07(1), F.S., the agency is not prohibited from disclosing the documents in all circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S. [now s. 119.071(2)(c), F.S.], "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not *prohibit* the showing of such information. There are many situations in which investigators have reasons for displaying information which they have the option not to display." *See also* AGO 90-50, noting that the exemption from disclosure for certain information about law enforcement personnel now set forth in s. 119.071(4)(d)1.a., F.S., does not prohibit a police department from posting the names, I.D. numbers, and photographs of its police officers for public display; however, in light of the statutory purpose of the exemption (safety of law enforcement officers), such posting would appear to be inconsistent with legislative intent. *Accord* AGO 07-21 (while statute makes photographs of law enforcement personnel exempt rather than confidential, custodian, in deciding whether such information should be disclosed, must determine whether there is a statutory or substantial policy need for disclosure and in the absence of a statutory or other legal duty to be accomplished by disclosure, whether release of such information is consistent with the exemption's purpose).

Once an agency has gone public with information which could have been previously

protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information. *Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988). Cf. AGO 01-74 (taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F. S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute).

However, in *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995), the court held that when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status. *And see Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) ("the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands"); *Alice P. v. Miami Daily News, Inc.*, 440 So. 2d 1300 (Fla. 3d DCA 1983), *review denied*, 467 So. 2d 697 (Fla. 1985) (confidential birth information contained in license application submitted to state health agency not subject to disclosure); AGO 04-44 (if the prison industry agency sends exempt proprietary confidential business information to the Secretary of the Department of Corrections in his capacity as a member of the board of directors of the prison industry agency, that information does not lose its exempt status by virtue of the fact that it was sent to the Secretary's office in the department); and AGO 94-77 (work product exception authorized in former s. 119.07[3][I], F.S. [now s. 119.071(1)(d), F.S.], will be retained if the work product is transferred from the county attorney to the city attorney pursuant to a substitution of parties to the litigation).

## **6. Are exempt records discoverable?**

An exemption from disclosure under the Public Records Act does not render the document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure. *Department of Professional Regulation v. Spiva*, 478 So. 2d 382 (Fla. 1st DCA 1985). Cf. *State, Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984) ("Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.").

For example, in *B.B. v. Department of Children and Family Services*, 731 So. 2d 30 (Fla. 4th DCA 1999), the court ruled that as a party to a dependency proceeding involving her daughters, a mother was entitled to discovery of the criminal investigative records relating to the death of her infant. The court found that the statutory exemption for active criminal investigative information did not "override the discovery authorized by the Rules of Juvenile Procedure." *Id.* at 34. *And see State, Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So. 2d 1322 (Fla. 2d DCA 1990), *review denied*, 576 So. 2d 286 (Fla. 1991) (records which are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records). Cf. *White v. City of Fort Lauderdale*, No. 08-60771-CIV, 2009 WL 1298353 (S.D. Fla. May 8, 2009) (defendant in federal lawsuit could not object to interrogatories on basis that information was protected as criminal investigative information since

exemption relates only to production of records); *Nolan v. Integrated Real Estate Processing, LP*, No. 3:08-cv-642-J-34HTS, 2009 WL 635799 (M.D. Fla. March 11, 2009) (while Florida statute makes complaint and any information obtained pursuant to investigation confidential, plaintiffs only ask whether an investigation occurred and, if so, the date thereof, case number, and outcome which is not protected by statute from being disclosed in discovery). Compare *Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit").

However, in some cases, legislative confidentiality requirements provide an express privilege from discovery. See, e.g., *Cruger v. Love*, 599 So. 2d 111 (Fla. 1992) (records of medical review committees are statutorily privileged from discovery). See also *Department of Health v. Grinberg*, 795 So. 2d 1136 (Fla. 1st DCA 2001).

## **G. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO LAW ENFORCEMENT AND SECURITY RECORDS?**

### **1. Active criminal investigative and intelligence information exemption**

#### **a. Purpose and scope of exemption**

Arrest and crime reports are generally considered to be open to public inspection. AGOs 91-74 and 80-96. And see AGO 08-23 (officer trip sheets revealing identity of officer, location and hours of work and locations to which officers have responded for emergency and non-emergency purposes are public records). However, s. 119.071(2)(c)1., F.S., exempts active criminal intelligence information and active criminal investigative information from public inspection. To be exempt, the information must be both "active" and constitute either "criminal investigative" or "criminal intelligence" information. See *Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), review denied, 786 So. 2d 1186 (Fla. 2001).

Thus, if a crime report contains active criminal investigative information, the criminal investigative information may be excised from the report. AGO 91-74. See also *Palm Beach Daily News v. Terlizzese*, No. CL-91-3954-AF (Fla. 15th Cir. Ct. April 5, 1991), holding that a newspaper was not entitled under Ch. 119, F.S., to inspect the complete and uncensored incident report (prepared following a reported sexual battery but prior to the arrest of a suspect), including the investigating officer's narrative report of the interview with the victim, since such information was exempt from inspection as active criminal investigative information and as information identifying sexual battery victims. See s. 119.071(2)(c) and (h), F.S.

The active criminal investigative and intelligence exemption is limited in scope; its purpose 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 Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla.

1987).

Moreover, the active criminal investigative and intelligence information exemption does not *prohibit* the disclosure of the information by the criminal justice agency; the information is exempt from and not subject to the mandatory inspection requirements in s. 119.07(1), F.S., which would otherwise apply. As the court stated in *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), "[t]here are many situations in which investigators have reasons for displaying information which they have the option not to display." *And see* AGO 90-50. *Cf. s. 838.21*, F.S., providing that it is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position.

The law enforcement agency seeking the exemption has the burden of proving that it is entitled to it. *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997); and *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985).

#### **b. What is active criminal investigative or intelligence information?**

"Criminal intelligence information" means information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." Section 119.011(3)(a), F.S.

Criminal 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" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal investigative information" is defined as information relating 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." Section 119.011(3)(b), F.S. *See Rose v. D'Alessandro*, 380 So. 2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information).

Such 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" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal justice agency" is defined to mean any law enforcement agency, court, prosecutor or any other agency charged by law with criminal law enforcement duties or

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. The term also includes the Department of Corrections. Section 119.011(4), F.S.

**c. What information is *not* considered to be criminal investigative or intelligence information and must be released unless some other exemption applies?**

Section 119.011(3)(c), F.S., states that the following information is not criminal investigative or criminal intelligence information:

1. The time, date, location and nature of a reported crime;
2. The name, sex, age, and address of a person arrested (but see s. G.10., *infra*, regarding confidentiality of juvenile records) or the name, sex, age and address of the victim of a crime, except for a victim of a sexual offense or of child abuse, as provided in s. 119.071(2)(h), F.S.;
3. The time, date and location of the incident and of the arrest;
4. The crime charged;
5. Documents given or required to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S. [providing an exemption from disclosure for criminal intelligence or investigative information which reveals the identity of a victim of a sexual offense or of child abuse], unless the court finds that release of the information prior to trial would be defamatory to the good name of a victim or witness or jeopardize the safety of such victim or witness; and would impair the ability of the state attorney to locate or prosecute a codefendant;
6. Informations and indictments except as provided in s. 905.26, F.S. [prohibiting disclosure of finding of indictment against a person not in custody, under recognizance or under arrest].

Accordingly, since the above information does not fall within the definition of criminal intelligence or criminal investigative information, it is always subject to disclosure unless some other specific exemption applies. For example, the "time, date, and location of the incident and of the arrest" cannot be withheld from disclosure since such information is expressly exempted from the definitions of criminal intelligence and criminal investigative information. See s. 119.011(3)(c)3., F.S.

**d. Are records released to the defendant considered to be criminal investigative or intelligence information?**

Except in limited circumstances, records which have been given or are required to

be given to the person arrested cannot be withheld from public inspection as criminal investigative or intelligence information. See s. 119.011(3)(c)5., F.S. In other words, once the material has been made available to the defendant as part of the discovery process in a criminal proceeding, the material is ordinarily no longer considered to be exempt criminal investigative or criminal intelligence information. See *Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987) (all information given or required to be given to defendants is disclosable to the public when released to defendants or their counsel pursuant to the rules of discovery). Accord *Times Publishing Company v. State*, 903 So. 2d 322, 325 (Fla. 2d DCA 2005) ("we begin with the important general principle that once criminal investigative or intelligence information is disclosed by the State to a criminal defendant that information becomes a nonexempt public record subject to disclosure pursuant to section 119.07[1]"); *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under the rules of discovery). Cf. *State v. Buenoano*, 707 So. 2d 714 (Fla. 1998) (restricted access documents provided to state attorney by federal government pursuant to a loan agreement retained their confidential status under a Florida law providing an exemption for out-of-state criminal investigative information that is shared with Florida criminal justice agencies on a confidential basis, even though the documents erroneously had been given to the defendant and placed in the court record).

For example, in *Satz v. Blankenship*, 407 So. 2d 396 (Fla. 4th DCA 1981), *review denied*, 413 So. 2d 877 (Fla. 1982), the court ruled that a newspaper reporter was entitled to access to tape recordings concerning a defendant in a criminal prosecution where the recordings had been disclosed to the defendant. The court concluded that a reading of the statute reflected the Legislature's belief that once the information was released to the defendant, there was no longer any need to exclude the information from the public. Thus, the tape recordings were no longer "criminal investigative information" that could be withheld from public inspection. See also *News-Press Publishing Co. Inc. v. D'Alessandro*, No. 96-2743-CA-RWP (Fla. 20th Cir. Ct. April 24, 1996) (once state allowed defense counsel to listen to portions of a surveillance audiotape involving a city councilman accused of soliciting undue compensation, those portions of the audiotape became excluded from the definition of "criminal investigative information," and were subject to public inspection). Cf. *City of Miami v. Post-Newsweek Stations Florida, Inc.*, 837 So. 2d 1002, 1003 (Fla. 3d DCA 2002), *review dismissed*, 863 So. 2d 1190 (Fla. 2003) (where defendant filed request for discovery, but withdrew request before state attorney provided such materials, requested materials were not "given or required by law . . . to be given to the person arrested" and thus did not lose their exempt status as active criminal investigative information).

Similarly, in *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986), the court upheld a trial judge's order requiring the state attorney to release to the news media all information furnished to the defense counsel in a criminal investigation. While the state attorney argued that the documents could be withheld because the criminal investigation was still "active"



and thus exempt from disclosure, the court rejected this contention by concluding that once the material was given to the defendant pursuant to the rules of criminal procedure, the material was excluded from the statutory definition of criminal investigative information. Therefore, it was no longer relevant whether the investigation was active or not and the documents could not be withheld as active criminal investigative information. *Id.* at 779n.1.

Chapter 119's requirement of public disclosure of records made available to the defendant does not violate the attorney disciplinary rule prohibiting ex parte comments about defendants as long as the state attorney does not put an interpretation on the record that prejudices the defendant or exposes witnesses. *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d at 780.

The only circumstances where criminal intelligence or investigative information can retain that status even though it has been made available to the defendant are:

- 1) If the information would reveal the identity of a victim of a sexual offense or child abuse pursuant to s. 119.071(2)(h), F.S.; or
- 2) If a court order has been issued finding that release of the information prior to trial would:
  - a) be defamatory to the good name of a victim or witness or jeopardize the safety of a victim or witness; and
  - b) impair the ability of a state attorney to locate or prosecute a codefendant.

In all other cases, material which has been made available to the defendant cannot be deemed criminal investigative or intelligence information and must be open to inspection unless some other exemption applies (*e.g.*, s. 119.071[2][e], F.S., exempting all information "revealing the substance of a confession" by a person arrested until there is a final disposition in the case); or the court orders closure of the material in accordance with its constitutional authority to take such measures as are necessary to obtain orderly proceedings and a fair trial or to protect constitutional privacy rights of third parties. *See Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982); *Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32 (Fla. 1988); *Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992). *And see Morris Communications Company LLC v. State*, 844 So. 2d 671, 673n.3 (Fla. 1st DCA 2003) (although documents turned over to the defendant during discovery are generally public records subject to disclosure under Ch. 119, the courts have authority to manage pretrial publicity to protect the defendant's constitutional rights as described in *Miami Herald Publishing Company v. Lewis*, *supra*). *Cf. Times Publishing Co. v. State*, 903 So. 2d 322 (Fla. 2d DCA 2005) (while the criminal discovery rules authorize a nonparty to file a motion to restrict disclosure of discovery materials based on privacy considerations, where no such motion has been filed, the judge is not authorized to prevent public access on his or her own initiative).

**e. When is criminal investigative and intelligence information considered**

## **inactive and thus no longer exempt from disclosure?**

### **(1) Active criminal investigative information**

Criminal investigative information is considered active (and, therefore, exempt from disclosure pursuant to s. 119.071[2][c], F.S.) "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." Section 119.011(3)(d)2., F.S. Information in cases barred from prosecution by a statute of limitation is not active. *Id.*

The definition of "active" requires "a showing in each particular case that an arrest or prosecution is reasonably anticipated in the foreseeable future." *Barfield v. City of Fort Lauderdale Police Department*, 639 So. 2d 1012, 1016 (Fla. 4th DCA), *review denied*, 649 So. 2d 869 (Fla. 1994). However, the Legislature did not intend that confidentiality be limited to investigations where the outcome and an arrest or prosecution was a certainty or even a probability. *Id.* at 1016-1017.

There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations. *See Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985). The fact that investigators might not yet have decided upon a suspect does not necessarily imply that the investigation is inactive. *Id.* at 1131.

Thus, an investigation will be deemed to be "active," even though there is no immediate anticipation of an arrest, so long as the investigation is proceeding in good faith, and the state attorney or grand jury will reach a determination in the foreseeable future. *Barfield v. City of Fort Lauderdale Police Department*, *supra*. Accordingly, a police department's criminal investigation into a shooting incident involving its officers continued to be "active" even though pursuant to department policy, all police shooting cases were sent to the state attorney's office for review by the grand jury and the department did not know if there would be an arrest in this particular case. *Id.*

Similarly, in *News-Press Publishing Co., Inc. v. Sapp*, 464 So. 2d 1335 (Fla. 2d DCA 1985), the court held that in view of an ongoing investigation by the state attorney and the convening of a grand jury in the very near future to consider a shooting incident by deputy sheriffs during an under cover drug transaction, documents consisting of the sheriff's completed internal investigation of the incident constituted "active criminal investigative information" and were, therefore, exempt from disclosure. *See also Wells v. Sarasota Herald Tribune Company, Inc.*, 546 So. 2d 1105 (Fla. 2d DCA 1989) (investigative files of the sheriff and state attorney were not inactive where an active prosecution began shortly after the trial judge determined that the investigation was inactive and ordered that the file be produced for public inspection).

Additionally, a circuit court held that a criminal investigative file involving an alleged 1988 sexual battery which had been inactive for three years, due in part to the death of the victim from unrelated causes, could be "reactivated" and removed from public view in 1992 when new developments prompted the police to reopen the case. The court found that it was irrelevant that the 1988 file could have been inspected prior to the current investigation; the important considerations were that the file apparently had not

been viewed by the public during its "inactive" status and the file was now part of an active criminal investigation and therefore exempt from disclosure as active criminal investigative information. *News-Press Publishing Co., Inc. v. McDougall*, No. 92-1193CA-WCM (Fla. 20th Cir. Ct. February 26, 1992).

In another case, however, the appellate court upheld a court order unsealing an arrest warrant affidavit upon a showing of good cause by the subject of the affidavit. The affidavit had been quashed and no formal charges were filed against the subject. The court held that the affidavit did not constitute active criminal investigative information because there was no reasonable, good faith anticipation that the subject would be arrested or prosecuted in the near future. In addition, most of the information was already available to the subject through grand jury transcripts, the subject's perjury trial, or by discovery. *Metropolitan Dade County v. San Pedro*, 632 So. 2d 196 (Fla. 3d DCA 1994). *And see Mobile Press Register, Inc. v. Witt*, 24 Med. L. Rptr. 2336, No. 95-06324 CACE (13) (Fla. 17th Cir. Ct. May 21, 1996) (ordering that files in a 1981 unsolved murder be opened to the public because, despite recent reactivation of the investigation, the case had been dormant for many years and no arrest or prosecution had been initiated or was imminent).

## **(2) Active criminal intelligence information**

In order to constitute exempt "active" criminal intelligence information, the information must "be of the type that will lead to the 'detection of *ongoing or reasonably anticipated criminal activities*.'" *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997), *quoting* s. 119.011(3)(d)1., F.S. *See Barfield v. Orange County, Florida*, No. C192-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying a petition for writ of mandamus seeking access to gang intelligence files compiled by the sheriff's office). *See also* AGO 94-48 (information contained in the statewide integrated violent crime information system established by the Florida Department of Law Enforcement constitutes active criminal intelligence information; even though some of the information may have come from closed investigations, the information is collected to "anticipate, prevent, and monitor criminal activity and to assist in the conduct of ongoing criminal investigations").

By contrast, in *Christy v. Palm Beach County Sheriff's Office, supra*, the court ruled that records generated in connection with a criminal investigation conducted 13 years earlier did not constitute "active" criminal intelligence information. The court noted that the exemption "is not intended to prevent disclosure of criminal files forever on the mere possibility that other potential criminal defendants may learn something from the files." *Id.*

## **(3) Pending prosecutions or appeals**

Criminal intelligence and investigative information is also considered to be "active" while such information is directly related to pending prosecutions or direct appeals. Section 119.011(3)(d), F.S. *See News-Press Publishing Co., Inc. v. Sapp, supra*; and *Tal-Mason v. Satz*, 614 So. 2d 1134 (Fla. 4th DCA), *review denied*, 624 So. 2d 269 (Fla. 1993) (contents of prosecutorial case file must remain secret until the conclusion of

defendant's direct appeal).

Once the conviction and sentence have become final, criminal investigative information can no longer be considered to be "active." *State v. Kokal*, 562 So. 2d 324, 326 (Fla. 1990). *Accord Tribune Company v. Public Records*, 493 So. 2d 480, 483-484 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987) (actions for postconviction relief following affirmance of the conviction on direct appeal are not pending appeals for purposes of s. 119.011[3][d]2., F.S.); *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997) (the term "pending prosecutions or appeals" in s. 119.011[3][d], F.S., applies only to ongoing prosecutions or appeals which have not yet become final).

It should be emphasized that the determination as to whether investigatory records related to pending prosecutions or appeals are "active" is relevant *only* to those records which constitute criminal intelligence or investigative information. In other words, if records are excluded from the definition of criminal intelligence or investigative information, as in the case of records given or required to be given to the defendant under s. 119.011(3)(c)5., F.S., it is immaterial whether the investigation is active or inactive. See *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 779n.1 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986) ("Something that is not criminal intelligence information or criminal investigative information cannot be active criminal intelligence information or active criminal investigative information."). *Accord Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under discovery rules even though there is a pending direct appeal).

**f. Does a criminal defendant's public records request trigger reciprocal discovery?**

Section 119.07(8), F.S., states that the public access rights set forth in s. 119.07, F.S., "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." Thus, a criminal defendant's public records request for nonexempt law enforcement records relating to the defendant's pending prosecution constitutes an election to participate in discovery and triggers a reciprocal discovery obligation. *Henderson v. State*, 745 So. 2d 319 (Fla. 1999).

**g. Does the active criminal investigative information exemption apply if the information has already been made public?**

It has been held that the criminal investigative exemption does not apply if the information has already been made public. *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992). See also *Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988) (once state has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by

preventing full access to the desired information).

However, the voluntary disclosure of a non-public record does not automatically waive the exempt status of *other* documents. *Arbelaez v. State*, 775 So. 2d 909, 918 (Fla. 2000). *Accord Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (release of the autopsy report and the medical examiner's public comments about the report did not mean that other records in the possession of the medical examiner relating to an active criminal investigation into the death were public; "[i]t is not unusual for law enforcement and criminal investigatory agencies to selectively release information relating to an ongoing criminal investigation in an effort to enlist public participation in solving a crime").

#### **h. May active criminal investigative information be shared with another criminal justice agency without losing its protected status?**

Exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status; in "determining whether or not to compel disclosure of active criminal investigative or intelligence information, the primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests." *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). The *City of Riviera Beach* court held that exempt records of the West Palm Beach police department's active criminal investigation concerning a shooting incident involving a police officer from Riviera Beach could be furnished to the Riviera Beach police department for use in a simultaneous administrative internal affairs investigation of the officer without losing their exempt status. *Accord Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

Additionally, a police department may enter into a contract with a private company that compiles raw police data and then provides informational reports to law enforcement. The release of the exempt information to the corporation for this purpose would not cause such records to lose their exempt status. AGO 96-36.

However, while the courts have recognized that active criminal investigative information may be forwarded from one criminal justice agency to another without jeopardizing its exempt status, "[t]here is no statutory exemption from disclosure of an 'ongoing federal prosecution.'" *Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001). In *Woolling*, the court held that a state attorney bore the burden of establishing that state attorney files in a nolle prossed case which were furnished to the federal government for prosecution of a defendant constituted active criminal investigative information; the fact that the federal government was actively prosecuting the case was not sufficient, standing alone, to justify imposition of the exemption.

#### **i. Do other public records become exempt from disclosure simply because they are transferred to a criminal justice agency?**

The exemption for active criminal intelligence and investigative information does not

exempt other public records from disclosure simply because they are transferred to a law enforcement agency. See, e.g., *Tribune Company v. Cannella*, 438 So. 2d 516, 523 (Fla. 2d DCA 1983), *reversed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (assistant state attorney could not withdraw public records from public scrutiny by asserting that he "compiled" the records simply because he subpoenaed them; thus, law enforcement personnel records compiled and maintained by the employing agency prior to a criminal investigation did not constitute criminal intelligence or criminal investigative information). *And see New Times, Inc. v. Ross*, No. 92-5795 CIV 25 (Fla. 11th Cir. Ct. March 17, 1992) (papers in a closed civil forfeiture file which subsequently became part of a criminal investigation were open to inspection as the materials could not be considered criminal investigative information because the file was closed prior to the commencement of the criminal investigation).

Thus, public records maintained and compiled by the Office of the Capital Collateral Representative cannot be transformed into active criminal investigative information by merely transferring the records to the Florida Department of Law Enforcement (FDLE). AGO 88-25. *Accord* Inf. Op. to Slye, August 5, 1993, concluding that the contents of an investigative report compiled by a state agency inspector general in carrying out his duty to determine program compliance are not converted into criminal intelligence information merely because FDLE also conducts an investigation or because such report or a copy thereof has been transferred to that department. *And see Sun-Sentinel, Inc. v. Florida Department of Children and Families*, 815 So. 2d 793 (Fla. 3d DCA 2002).

Similarly, in A GO 92-78, the Attorney General's Office concluded that otherwise disclosable public records of a housing authority are not removed from public scrutiny merely because records have been subpoenaed by and transferred to the state attorney's office. *And see* Inf. Op. to Theobald, November 16, 2006, stating that while an individual would be prohibited from obtaining records from the internal investigation file pursuant to s. 112.533(2), F.S., while the investigation is active, public records such as overtime slips created prior to the investigation and maintained in the law enforcement officer's personnel file would not become confidential simply because copies of such records are being used in the investigation.

However, the exemption for active criminal investigative information may not be subverted by making a public records request for all public records gathered by a law enforcement agency in the course of an ongoing investigation; to permit such requests would negate the purpose of the exemption. AGO 01-75.

In addition, 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 disclosure requirements, during the period in which the information constitutes active criminal investigative or intelligence information. Section 19.071(2)(c)2.a., F.S. The law enforcement agency that made the request must give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active, so that

the custodian's response to the request and information that would identify the public record requested are available to the public. Section 119.071(2)(c)2.b., F.S.

Thus, while agency records are not exempt merely because they have been submitted to FDLE, s. 119.071(2)(c)2.a., F.S., exempts FDLE's request to inspect or copy records, as well as the agency's response, or any information that would identify the public record that was requested by FDLE or provided by the agency during the period in which the information constitutes criminal intelligence or criminal investigative information that is active. AGO 06-04. Although a request may be made for the agency's records, such a request may not be phrased, or responded to, in terms of a request for the specific documents asked for and received by FDLE during the course of any active criminal investigation. *Id. Cf. Inf. Op. to Theobald*, November 16, 2006, stating that while the records in a personnel department were subject to disclosure, the personnel department was precluded from identifying which of its records had been gathered by a law enforcement agency in the course of its active internal investigation.

**j. Is an entire report exempt if it contains some active criminal investigative or intelligence information?**

The fact that a crime or incident report may contain some active criminal investigative or intelligence information does not mean that the entire report is exempt from disclosure. Section 119.07(1)(d), F.S., requires the custodian of the document to delete only that portion of the record for which an exemption is asserted and to provide the remainder of the record for examination. *See, e.g., City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995), in which the court held that a city was authorized to withhold exempt active criminal investigative records but "must comply with the disclosure requirements of sections 119.07(2) [now s. 119.07(1)(d)] and 119.011(3)(c) by making partial disclosure of certain non-exempt information contained in the records including, *inter alia*, the date, time and location of the incident."

**k. When is criminal investigative or intelligence information received from other states or the federal government exempt from disclosure?**

Pursuant to s. 119.071(2)(b), F.S., criminal intelligence or investigative information received by a Florida criminal justice agency from a non-Florida criminal justice agency on a confidential or similarly restricted basis is exempt from disclosure. *See State v. Wright*, 803 So. 2d 793 (Fla. 4th DCA 2001), *review denied*, 823 So. 2d 125 (Fla. 2002) (state not required to disclose criminal histories of civilian witnesses which it obtained from the Federal Bureau of Investigation). The purpose of this statute is to "encourage cooperation between non-state and state criminal justice agencies." *State v. Buenoano*, 707 So. 2d 714, 717 (Fla. 1998). Thus, confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement. *Id.*

## **I. Is criminal investigative or intelligence information received prior to January 25, 1979, exempt from disclosure?**

Criminal intelligence or investigative information obtained by a criminal justice agency prior to January 25, 1979, is exempt from disclosure. Section 19.071(2)(a), F.S. See *Satz v. Gore Newspapers Company*, 395 So. 2d 1274, 1275 (Fla. 4th DCA 1981) ("All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is specifically exempt from the requirements of public disclosure.").

## **2. Autopsy records**

### **a. Autopsy reports**

Autopsy reports made by a district medical examiner pursuant to Ch. 406, F.S., are public records and are open to the public for inspection in the absence of an exemption. AGO 78-23. Cf. *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (physical specimens relating to an autopsy are not public records, although drafts and notes taken during an autopsy as well as laboratory reports and photographs are public records). And see *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 777 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986), noting that a former statutory exemption precluding release of autopsy reports had been repealed.

Although autopsy reports are subject to Ch. 119, F.S., "[d]ocuments or records made confidential by statute do not lose such status upon receipt by the medical examiner." AGO 78-23. See *Church of Scientology Flag Service Org., Inc. v. Wood*, *supra* (predeath medical records in the possession of the medical examiner are not subject to public inspection). In addition, statutory exemptions from disclosure, such as the exemption for active criminal investigative information, may also apply to portions of the autopsy report itself. AGO 78-23. See *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), noting the application of the active criminal investigative information exemption to information contained in autopsy records.

### **b. Autopsy photographs and recordings**

Section 406.135(2), F.S., provides that a photograph or video or audio recording of an autopsy held by a medical examiner is confidential and may not be released except as provided by court order or as otherwise authorized in the exemption. See AGOs 03-25 and 01-47, discussing the circumstances under which autopsy photographs and recordings may be viewed or copied. And see *Inf. Op. to Lynn*, July 25, 2007 (exemption applies to photographs and recordings taken or made by the medical examiner as a part of the autopsy process, including those taken before, during, and after the medical examiner performs the actual autopsy procedure). Cf. *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (upholding trial court finding that newspaper failed to establish good cause for release of autopsy photographs of race car driver). Compare *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 14 (Fla. 2d DCA 2005), *review denied*,



918 So. 2d 293 (Fla. 2005), *cert. dismissed*, 126 S. Ct. 1139 (2006), in which the district court reversed a trial court order that had barred the media from viewing autopsy photographs that were admitted into evidence in open court during a murder trial; according to the appellate court, s. 406.135, F.S., "does not render these *court exhibits* confidential." (e.s.)

### 3. "Baker Act" reports

Part I, Ch. 394, F.S., is the "Baker Act," Florida's mental health act. The Baker Act provides for the voluntary or involuntary examination and treatment of mentally ill persons. Pursuant to s. 394.463(2)(a)2., F.S., a law enforcement officer must take a person who appears to meet the statutory criteria for involuntary examination into custody and deliver that person, or have that person delivered, to the nearest receiving facility for examination.

Section 394.463(2)(a)2., F.S., requires the officer to "execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record." A patient's clinical record is confidential. Section 394.4615(1), F.S.

However, in AGO 93-51, the Attorney General's Office noted that a written incident or event report prepared after a specific crime has been committed which contains information given during the initial reporting of the crime, is filed with the law enforcement agency as a record of that event, and is not made a part of the patient's clinical record, is not confidential pursuant to Ch. 394, F.S. The opinion noted that the incident report in question was not the confidential law enforcement report required by s. 394.463(2)(a)2., but was a separate written incident or event report prepared by a deputy sheriff for filing with the sheriff's office as an independent record of the deputy's actions.

### 4. Confessions

Section 119.071(2)(e), F.S., exempts from disclosure any information revealing the substance of a confession by a person arrested until such time as the case is finally determined by adjudication, dismissal, or other final disposition. *See Times Publishing Co. v. Patterson*, 451 So. 2d 888 (Fla. 2d DCA 1984) (trial court order permitting state attorney or defendant to designate affidavits, depositions or other papers which contained "statements or substance of statements" to be sealed was overbroad because the order was not limited to those statements revealing the substance of a "confession").

In AGO 84-33, the Attorney General's Office advised that only such portions of the complaint and arrest report in a criminal case file which reveal the "substance of a confession," *i.e.*, 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 the entire criminal offense, are exempt from public disclosure. *But see Times Publishing Company v. State*, 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002), in which the appellate court held that a trial judge's order sealing portions of records of police interviews with the defendant did not constitute a departure

from the essential requirements of law; however, portions of the interview transcript and tape which did not "directly relate to [the defendant's] participation in the crimes" did not contain the substance of a confession pursuant to s. 119.071(2)(e), F.S., and must be released.

## 5. Confidential informants

Section 119.071(2)(f), F.S., exempts information disclosing the identity of confidential informants or sources. This exemption applies regardless of whether the informants or sources are still active or may have, through other sources, been identified as such. *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1368 (Fla. 4th DCA 1997); *Salcines v. Tampa Television*, 454 So. 2d 639 (Fla. 2d DCA 1984); and *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010). *And see State v. Natson*, 661 So. 2d 926 (Fla. 4th DCA 1995) (private citizen who provided police with tip information which led to defendant's arrest may be afforded confidential informant status). *Cf. Doe v. State*, 901 So. 2d 881 (Fla. 4th DCA 2005) (where citizen provided information to state attorney's office which led to a criminal investigation and was justified in inferring or had a reasonable expectation that he would be treated as a confidential source, the citizen is entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney's office); *State v. Bartholomew*, No. 08-5656CF10A (Fla. 17th Cir. Ct., August 7, 2009) (even if Crimestoppers Council of Broward County were an agency for purposes of Ch. 119, F.S., information relating to the identity of informants and persons from whom they received information would be confidential under s. 119.071[2][f], F.S.).

However, in *Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994), the court held that a police department should not have refused to release an entire police report on the ground that the report contained some information identifying a confidential informant. According to the court, "[w]ithout much difficulty the name of the informant, [and] the sex of the informant (which might assist in determining the identity) . . . can be taken out of the report and the remainder turned over to [the newspaper]." *Id.* at 1197. *Accord Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d at 1368.

Moreover, in *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court ruled that information regarding payments to a confidential informant (who had been previously identified as a confidential informant during a criminal trial) is subject to disclosure as long as the records are sufficiently redacted to conceal the specific cases on which the informant worked. The court acknowledged that the Public Records Act may not be used in such a way as to obtain information that the Legislature has declared must be exempt from disclosure, but said that "this is not a situation where someone has alleged that they know or suspect the identity of a confidential informant and the production of records involving that informant would confirm the person's information or suspicion." *Id.*

## 6. Criminal history information

### a. Criminal history information generally

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lynn, June 1, 1990. *And see* AGO 97-09 (a law enforcement agency may, without a request, release nonexempt information contained in its public records relating to sexual offenders; the agency's authority to release such information is not limited to those offenders who are designated as "sexual predators").

Section 943.046, F.S., states:

- (1) Any state or local law enforcement agency may release to the public any criminal history information and other information regarding a criminal offender, including, but not limited to, public notification by the agency of the information, unless the information is confidential and exempt [from disclosure]. However, this section does not contravene any provision of s. 943.053 which relates to the method by which an agency or individual may obtain a copy of an offender's criminal history record.
- (2) A state or local law enforcement agency and its personnel are immune from civil liability for the release of criminal history information or other information regarding a criminal offender, as provided by this section.

Section 943.053(2), F.S., referenced in the above statute, provides restrictions on the dissemination of criminal history information obtained from *federal* criminal justice information systems and *other states* by stating that such information shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency. Thus, criminal history record information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection. AGO 99-01.

Section 943.053(3), F.S., states that criminal history information compiled by the Criminal Justice Information Program of the Florida Department of Law Enforcement from *intrastate* sources shall be provided to law enforcement agencies free of charge and to persons in the private sector upon payment of fees as provided in the subsection.

### b. Sealed and expunged records

Access to criminal history records sealed or expunged by court order in accordance with s. 943.059 or s. 943.0585, F.S., is strictly limited. *See, e.g., Alvarez v. Reno*, 587 So. 2d 664 (Fla. 3d DCA 1991) (Goderich, J., specially concurring) (state attorney report and any other information revealing the existence or contents of sealed records is not a public record and cannot, under any circumstances, be disclosed to the public).

A law enforcement agency that has been ordered to expunge criminal history information or records should physically destroy or obliterate information consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or

other formal criminal charges and the disposition of those charges. A GO 02-68. However, criminal intelligence information and criminal investigative information do not fall within the purview of s. 943.0585, F.S. *Id.* And see AGO 00-16 (only those records maintained to formalize the petitioner's arrest, detention, indictment, information, or other formal criminal charge and the disposition thereof would be subject to expungement under s. 943.0585).

There are exceptions allowing disclosure of information relating to the existence of an expunged criminal history record to specified entities for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. Section 943.0585(4), F.S. Similar provisions exist relative to disclosure of sealed criminal history records. Section 943.059(4), F.S. A records custodian who has received information relating to the existence of an expunged or sealed criminal history record is prohibited from disclosing the existence of such record. AGO 94-49.

## **7. Emergency "911" voice recordings**

Section 365.171(12), F.S., provides that any record, recording, or information, or portions thereof, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, or telephone number or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from s. 119.07(1), F.S. The exemption applies only to the name, address, telephone number or personal information about or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. *Id.* Accord AGO 90-43 (only that portion of 911 tape relating to name, address and telephone number of the caller exempt).

A tape recording of a "911" call is a public record which is subject to disclosure after the deletion of the exempt information. AGO 93-60. This does not, however, preclude the application of another exemption to such records. Thus, if the "911" calls are received by a law enforcement agency and the county emergency management department, information which is determined by the law enforcement agency to constitute active criminal investigative information may also be deleted from the tape prior to public release. AGO 95-48. See also Inf. Op. to Fernandez, September 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in "911" radio transmissions).

## **8. Fingerprint records**

Biometric identification information is exempt from s. 119.07(1), F.S. Section 119.071(5)(g)1., F.S. The term "biometric identification information" means any record of friction ridge detail, fingerprints, palm prints, and footprints. *Id.*

## 9. Firearms records

Section 790.335(2), F.S., states that no governmental agency "or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms." Exceptions to the prohibition are included in s. 790.335(3), F.S., and include, among other things, records of firearms used in committing a crime and records relating to any person who has been convicted of a crime. See also s. 790.065(4), F.S., providing that specified information relating to a buyer or transferee of a firearm who is not prohibited by law from receipt or transfer of a firearm is confidential and may not be disclosed by the Department of Law Enforcement to any other person or agency. Cf. AGO 04-52 (prohibition against maintaining list of firearms and firearms owners not applicable to paper pawn transaction tickets).

Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Department of Agriculture and Consumer Services is confidential and exempt from public disclosure requirements. Section 790.0601(1), F.S. Such information shall be disclosed with the express written consent of the applicant or licensee or his or her legally authorized representative, by court order upon a showing of good cause, or upon request by a law enforcement agency in connection with the performance of lawful duties. Section 790.0601(2), F.S.

## 10. Juvenile offender records

### a. Confidentiality

Juvenile offender records traditionally have been considered confidential and treated differently from other records in the criminal justice system. With limited exceptions, s. 985.04(1), F.S., provides, in relevant part, that:

Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, *all information obtained under this chapter* in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department [of Juvenile Justice], the Parole Commission, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile *is confidential and may be disclosed only to* the authorized personnel of the court, the department and its designees, the Department of Corrections, the Parole Commission, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court. (e.s.)

Similarly, s. 985.04(7)(a), F.S., limits access to records in the custody of the Department of Juvenile Justice. With the exception of specified persons and agencies, juvenile records in the custody of that agency "may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have

sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper." *And see* s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records. *Cf.* s. 943.053(3), F.S., governing release of "[c]riminal history information, including information relating to minors" compiled by the Florida Department of Law Enforcement).

Thus, as a general rule, access to records of juvenile offenders is limited. *See, e.g.*, *Inf. Op. to Galbraith*, April 8, 1992 (city's risk manager and attorney representing city in unrelated civil lawsuit not among those authorized to have access); and *Inf. Op. to Wierzbicki*, April 7, 1992 (domestic violence center not among those authorized to receive juvenile information). *And see* AGO 07-19, stating that in a juvenile misdemeanor case where the provisions of s. 985.04(2), F.S., are not applicable, the sheriff's office is not authorized to reveal the names and addresses of the parents of the juvenile offender when asked for in a public records request.

However, the subject of juvenile offense records may authorize access to such records to others (such as a potential employer) by means of a release. AGO 96-65. And, juvenile confidentiality requirements do not apply to court records of a case in which a juvenile is prosecuted as an adult, regardless of the sanctions ultimately imposed in the case. AGO 97-28.

However, if a juvenile prosecuted as an adult is transferred to serve his or her sentence in the custody of the Department of Juvenile Justice, the department's records relating to that juvenile are not open to public inspection. *New York Times Company v. Florida Department of Juvenile Justice*, No. 03-46-CA (Fla. 2d Cir. Ct. March 20, 2003). *See* s. 985.04(7)(a), F.S., providing confidentiality for records in the custody of the department regarding children.

Confidential photographs of juveniles taken in accordance with s. 985.11, F.S., "may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime." Section 985.11(1)(b), F.S. This statute authorizes a law enforcement officer to use photographs of juvenile offenders in a photographic lineup for the purpose of identifying the perpetrator of a crime, regardless of whether those juvenile offenders are suspects in the crime under investigation. AGO 96-80. *Cf. Barfield v. Orange County, Florida*, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992) (denying petitioner's request to inspect gang intelligence files compiled by the sheriff's office).

## **b. Exceptions to confidentiality**

### **(1) Child traffic violators**

All records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations. Section 985.11(3), F.S.

### **(2) Felony arrests and adult system transfers**

Until October 1, 1994, law enforcement agencies generally could release only the

name and address of juveniles 16 and older who had been charged with or convicted of certain crimes. In 1994, the juvenile confidentiality laws were modified to eliminate the age restriction and provide enhanced disclosure. Section 985.04(2), F.S., now provides:

Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

- (a) Taken into custody if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- (b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- (c) Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556;
- (d) Taken into custody by a law enforcement officer for a violation of law subject to the provisions of s. 985.557(2)(b) or (d); or
- (e) Transferred to the adult system but sentenced to the juvenile system pursuant to s. 985.565 shall not be considered confidential and exempt from . . . s. 119.07(1) solely because of the child's age.

Thus, a court ruled that a surveillance videotape which showed an altercation between children on a school bus was a student record and initially was exempt from disclosure pursuant to former student confidentiality laws. *In the Interest of D.P., etc.*, No. 97-4001 (Fla. 18th Cir. Ct. November 6, 1997). However, some of the students were subsequently arrested on felony charges and the tape was shown to defense counsel. Because of this, the judge ordered that the tape be publicly released with the faces of the non-charged students and the victims excised from view. *Id.* While current law exempts "education records" (as defined in FERPA and implementing regulations), the court in *National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), concluded that FERPA does not prohibit the release of records so long as the student's identifying information is redacted. See s. J.4., *infra*, of this manual, discussing changes to student confidentiality laws.

The expanded disclosure provisions apply only to juvenile records created after October 1, 1994, the effective date of the amendments to the juvenile confidentiality laws. AGO 95-19. Confidential information on juveniles arrested prior to October 1, 1994, is available by court order upon a showing of good cause. *Id.* Cf. *In the Interest of Gay*, No. 94-8481 (Fla. 6th Cir. Ct. Juv. Div. December 30, 1994), allowing a newspaper to view "the entire juvenile court files," with the exception of psychological reports, relating to juveniles facing felony charges.

### **(3) Mandatory notification to schools**

Section 985.04(4)(b), F.S., provides that when the state attorney charges a juvenile with a felony or a delinquent act that would be a felony if committed by an adult, the

state attorney must notify the superintendent of the juvenile's school that the juvenile has been charged with such felony or delinquent act. A similar directive applies to a law enforcement agency that takes a juvenile into custody for an offense that would have been a felony if committed by an adult, or a crime of violence. Section 985.04(4)(a), F.S.

In addition, s. 1006.08(2), F.S., requires the court, within 48 hours of the finding, to notify the appropriate school superintendent of the name and address of a student found to have committed a delinquent act, or who has had an adjudication of a delinquent act withheld which, if committed by an adult, would be a felony, or the name and address of a student found guilty of a felony. *And see* s. 985.04(4), F.S., requiring the school superintendent, when informed by a state attorney of a child formally charged with a felony or a delinquent act which, if committed by an adult, would be a felony, to relay such information to certain school personnel within 48 hours, and requiring the Department of Juvenile Justice to disclose to the school superintendent the presence of a juvenile sexual offender in the care and custody or under the jurisdiction and supervision of the department.

#### **(4) Victim access**

Section 985.036(1), F.S., allows the victim, the victim's parent or guardian, their lawful representatives, and, in a homicide case, the next of kin, to have access to information and proceedings in a juvenile case, provided that such rights do not interfere with the constitutional rights of the juvenile offender. Those entitled to access "may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies." *Id. And see* ss. 985.04(3) and 960.001(8), F.S., authorizing similar disclosures to victims.

#### **(5) Sexual offenders**

Section 985.481(4), F.S., authorizes the Department of Juvenile Justice or any law enforcement agency to notify the community and the public of the presence in the community of a person who has been adjudicated delinquent as provided in section 943.0435(1)(a)1.d., F.S. However, with respect to a sexual offender who has been found to be a sexual predator under chapter 775, the Department of Law Enforcement or any other law enforcement agency must inform the community and the public of the sexual predator's presence in the community as provided in chapter 775. *Id. And see* s. 985.04(6)(b), F.S., providing sexual offender and predator registration information as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., is a public record pursuant to s. 119.07(1), F.S., and as otherwise provided by law.

### **11. Law enforcement personnel records**

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. *See Tribune Company v. Cannella*, 438 So. 2d 516, 524 (Fla. 2d DCA 1983), *quashed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (law enforcement personnel records compiled and maintained by the employing agency "can never constitute criminal investigative or



intelligence information within the meaning of the Public Records Act even if subpoenaed by another law enforcement agency at some point after their original compilation by the employing agency"). However, there are some exemptions which apply specifically to law enforcement personnel records.

## **a. Complaints filed against law enforcement officers**

### **(1) Scope of exemption and duration of confidentiality**

Section 112.533(2)(a), F.S., provides that complaints filed against law enforcement officers and correctional officers, and all information obtained pursuant to the agency's investigation of the complaint, are confidential *until* the investigation is no longer active or until the agency head or his or her designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the investigation with a finding to either proceed or not to proceed with disciplinary action or the filing of charges. See also s. 112.531(1), F.S., which defines "law enforcement officer" as any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S.

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. AGO 93-61. However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991).

While s. 112.533, F.S., applies to complaints and records obtained pursuant to the agency's investigation of the complaint, it does not transform otherwise public records (such as crime or incident reports) into confidential records simply because the actions which are described in the crime report later form the basis of a complaint filed pursuant to s. 112.533, F.S. AGO 96-27. Thus, a circuit judge ordered a police department to provide the media with a copy of an unredacted incident report that identified a police officer involved in the shooting of an armed suspect. *Morris Publishing Group, LLC v. Thomason*, No. 16-2005-CA-7052-XXXX-MA (Fla. 4th Cir. Ct. October 14, 2004). And see AGO 08-33 (list of law enforcement officers who have been placed on administrative duty by their employer is not confidential under s. 112.533[2][a], F.S., but is subject to inspection and copying even if information on the list will identify officers who are the subject of internal investigation).

If the officer resigns prior to the agency's completion of its investigation, the exemption from disclosure provided by s. 112.533(2), F.S., no longer applies, even if the agency is still actively investigating the complaint. AGO 91-73. However, if the complaint has generated information which qualifies as active criminal investigative information, *i.e.*, information compiled by a criminal justice agency while conducting an ongoing criminal investigation of a specific act, such information would be exempt while the investigation is continuing with a good faith anticipation of securing an arrest or prosecution in the foreseeable future. *Id.* See s. 112.533(2)(b), F.S., providing that the

disclosure provisions do not apply to any public record [such as active criminal investigative information exempted in s. 119.071(2)(c), F.S.] which is exempt from disclosure pursuant to Ch. 119, F.S.

The exemption is of limited duration. Section 112.533(2), F.S., establishes that the complaint and all information gathered in the investigation of that complaint generally become public records at the conclusion of the investigation or at such time as the investigation becomes inactive. AGO 95-59. Thus, a court ruled that the exemption ended once the sheriff's office provided the accused deputy with a letter stating that the investigation had been completed, the allegations had been sustained, and that the deputy would be notified of the disciplinary action to be taken. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000).

However, the mere fact that written notice of intervening actions is provided to the officer under investigation does not signal the end of the investigation nor does such notice make this information public prior to the conclusion of the investigation. AGO 95-59. Similarly, the exemption remains in effect if an agency schedules a pre-disciplinary determination meeting with an officer to hear and evaluate the officer's side of the case because "[d]iscipline is not an accepted fact at this point." *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

A complaint is presumed to be inactive, and hence subject to disclosure, if no finding is made within 45 days after the complaint is filed. Section 112.533(2)(b), F.S. See *City of Delray Beach v. Barfield*, 579 So. 2d at 318 (trial court's finding that complaint was inactive, despite contrary testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness—especially, as here, where there is other record evidence which sustains it").

## **(2) Law enforcement officer's access**

A political subdivision that initiates or receives a complaint against a law enforcement officer or correctional officer must within 5 business days forward the complaint to the employing agency of the officer who is the subject of the complaint for review or investigation. Section 112.533(1)(b), F.S. The confidential nature of the complaint does not preclude the officer who is the subject of the complaint, along with legal counsel or other representative, from reviewing the complaint and all statements, regardless of form, made by the complainant and witnesses, and all existing evidence, including, but not limited to, incident reports, analyses, GPS locator information, and audio or video recordings relating to the investigation immediately before beginning the investigative interview. Section 112.533(2)(a), F.S. If a witness is incarcerated in a correctional facility and may be under the supervision of, or have contact with, the officer under investigation, only the names and statements of the complainant and nonincarcerated witnesses may be reviewed by the officer. *Id.*

The officer under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal must be informed of the nature of the investigation before any interrogation begins and must be informed of the names of all complainants. Section 112.532(1)(d),

F.S. The complaint and all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to the officer who is the subject of the complaint before the beginning of any investigative interview of that officer. *Id.*

Thus, the officer who is the subject of the complaint may have access to confidential information prior to the time that such information becomes available for public inspection. AGO 96-27. However, s. 112.533(2)(b) F.S., qualifies the officer's right of access provided by s. 112.533(2)(a), F.S., by stating that the disclosure provisions do not apply to any record that is exempt from disclosure under Ch. 119, F.S., such as active criminal investigative information.

The limited access to the complaint and witness statements provided by s. 112.533(2)(a), F.S., does not restrict the officer's (or the public's) access to otherwise public records, such as incident reports because "[t]here is no indication in section 112.533 . . . that the Legislature intended to make public records that are open to public inspection and copying unavailable to a law enforcement officer who is the subject of a complaint under investigation by a law enforcement agency." AGO 96-27.

Moreover, notwithstanding the provisions of s. 112.533(2), F.S., if an officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal, the officer, or the officer's representative, shall, upon request, be provided with a complete copy of the investigative file, including the final Investigative report and all evidence, and be given the opportunity to address the findings in the report with the employing agency before imposing disciplinary action. Section 112.532(4)(b), F.S. "The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal." *Id.*

### **(3) Limitations on disclosure**

Section 112.533(2)(b), F.S., states that the inspection provisions in that subsection do not apply to any public record which is exempt from public disclosure under Ch. 119, F.S. For example, active criminal investigative or intelligence information which is exempt pursuant to s. 119.071(2)(c), F.S., remains exempt notwithstanding the disclosure provisions set forth in s. 112.533(2)(a), F.S. *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001). *And see* AGO 91-73. Thus, in such cases, the information would be subject to disclosure when the criminal investigative information exemption ends, rather than as provided in s. 112.533(2), F.S. *Cf. City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status).

Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure since the information is exempt

pursuant to s. 119.071(2)(h), F.S. *Palm Beach County Police Benevolent Association v. Neumann, supra.*

However, the state attorney's records of a *closed* criminal investigation are not made confidential by s. 112.533, F.S., even though an internal investigation conducted by the police department remains pending concerning the same complaint. AGO 00-66. *Cf.* AGO 96-05, noting that a police report of an agency's criminal investigation of a police officer is a public record in the hands of the police department after the investigation is over regardless of whether a copy of the report is forwarded to the Criminal Justice Standards and Training Commission or to the Commission on Ethics.

#### **(4) Unauthorized disclosure penalties**

Section 112.533(4), F.S., makes it a first degree misdemeanor for any person who is a participant in an internal investigation to willfully disclose any information obtained pursuant to the agency's investigation before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)." Section 112.533(4), F.S. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. *Id.*

The Attorney General's Office has issued several advisory opinions interpreting this statute. *See, e.g.,* AGOs 03-60 (while public disclosure of information obtained pursuant to an internal investigation prior to its becoming a public record is prohibited, s. 112.533[4], F.S., "would not preclude intradepartmental communications among those participating in the investigation"); and 96-18 (statute does not preclude a chief of police from discussing information obtained from an active internal investigation with his or her supervisory staff within the police department in carrying out the internal investigation). *Cf.* AGO 97-62 (confidentiality requirements prevent the participation of a citizens' board in resolving a complaint made against a law enforcement officer until the officer's employing agency has made its initial findings). *But see Cooper v. Dillon*, 403 F.3d 1208, 1218-1219 (11th Cir. 2005), in which the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., was unconstitutional "[b]ecause the curtailment of First Amendment freedoms by Fla. Stat. ch. 112.533(4) is not supported by a compelling state interest, the statute fails to satisfy strict scrutiny and unconstitutionally abridges the rights to speak, publish, and petition government."

#### **b. Home addresses, telephone numbers, etc.**

Section 119.071(4)(d)1.a., F.S., makes exempt (but not confidential) certain information relating to past and present law enforcement officers and their families held by the officer's employer by excluding from public inspection:

The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers . . . ; 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 . . . .

The same exemption exists for current or former state attorneys, statewide prosecutors, as well as current and former assistant state attorneys, and assistant statewide prosecutors. Section 119.071(4)(d)1.d., F.S. *And see* s. 119.071(4)(d)1.i., F.S. (applying a similar exemption to certain employees of the Department of Juvenile Justice). Identification and location information ( *i.e.*, home address, telephone number and photograph of a current or former United States attorney or assistant United States attorney and the attorney's spouse or child, as well as the place of employment of the spouse or child or the name and location of the school or day care facility attended by the child) is exempt provided the attorney submits to the agency having custody of such information a written request to exempt such information and a written statement that he or she has made reasonable efforts to protect such information from being available to the public. Section 119.071(5)(i), F.S.

An agency that is the custodian of personal information specified in s. 119.071(4)(d)1., F.S., but is not the past or present employer of the officer or employee, may maintain the exempt status of that information *only if* the officer or employee or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)2., F.S. See AGO 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections), and AGO 97-67 (Official Records maintained by clerk of court). A property appraiser is precluded from making technology available to the public that would enable a user to view a map on the Internet showing the physical location of a law enforcement officer's home, even though the map does not contain the actual home address of the officer, if the property appraiser has received a written confidentiality request from the officer. AGO 04-20. *And see* Inf. Op. to Cook, December 22, 2008, noting that nothing in s. 119.071(4)(d) indicates that such a written request may be made after a request for the public record has been made; generally, the date in determining whether a document is subject to disclosure is the date the public records request is made, making the law in effect on that date applicable.

It should also be noted that the exemption afforded by s. 119.071(4)(d), F.S., applies only to records held by a public agency or a private entity acting on behalf of a public agency; it does not apply to or preclude a private company from releasing such information unless that company falls within the definition of "Agency" because it is acting on behalf of a public agency. Inf. Op. to Gomez. November 3, 2008.

The purpose of the s. 119.071(4)(d) exemption is to protect the safety of law enforcement officers and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. AGO 90-50. Accordingly, a posting of the names, I.D. numbers and photographs of police officers in the hallway of the police department for public display would appear to be counter to the purpose of the exemption. *Id.* *And see* AGO 07-21 stating that a police department, in determining whether to release photographs of law enforcement personnel, must determine whether there is a statutory or substantial policy need for disclosure. In the absence of a statutory or other legal duty to be accomplished by disclosure, the agency

should consider whether the release of such information is consistent with the purpose of the exemption afforded by s. 119.071(4)(d)1. Cf. s. 843.17, F.S., making it a misdemeanor to maliciously publish or disseminate, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer. *But see Brayshaw v. City of Tallahassee, Fla.*, 709 F. Supp. 2d 1244 (N.D. Fla. 2010), holding that s. 843.17, F.S., was unconstitutional on its face.

The Attorney General's Office has advised that s. 119.071(4)(d)1., F.S., does not exempt from disclosure booking photographs of law enforcement and correctional officers who have been arrested and who are not undercover personnel, whose identity would otherwise be protected by s. 119.071(4)(c), F.S. AGO 94-90. However, if the officer has filed a written request for confidentiality as provided in former s. 119.07(3)(i)2., F.S. [see now s. 119.071(4)(d)2., F.S.], the booking photograph may not be released. *Fraternal Order of Police, Consolidated Lodge 5-30, Inc. v. The Consolidated City of Jacksonville*, No. 2000-4718-CA (Fla. 4th Cir. Ct. December 21, 2001). *And see Sarasota Herald-Tribune Co. v. Sarasota County Sheriff's Office*, No. 96-1026-CA-01 (Fla. 12th Cir. Ct. March 13, 1996) (denying newspaper's request for booking photograph of sheriff's deputy who had filed a written request for confidentiality). Thus, in AGO 07-21, the Attorney General's Office stated that in cases where s. 119.071(4)(d)8. [see now s. 119.071(4)(d)2.], F.S., applies and the officer has filed a written request to maintain the information as exempt, it may be advisable in light of the cases cited above to obtain the officer's permission before the release of the photograph.

While s. 119.071(4)(d)1., F.S., exempts the home addresses, telephone numbers, social security numbers and photographs from the mandatory disclosure requirements of the Public Records Act, it does not prohibit the city from maintaining the names and addresses of its law enforcement officers. AGO 90-50. *See also* Inf. Op. to Reese, April 25, 1989 (information from the city personnel files which reveals the home addresses of former law enforcement personnel may be disclosed to the State Attorney's office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S.). *And see* Inf. Op. to Laquidara, July 17, 2003, advising that the cellular telephone numbers of telephones provided by the agency to law enforcement officers and used in performing law enforcement duties are not exempt from disclosure under this exemption.

Section 119.071(4)(d)1.a., F.S., does not contain a definition of "law enforcement personnel." Thus, the scope of the exemption is not clear. The Attorney General's Office has noted this problem and has recommended that the Legislature clarify the statute. AGO 07-21 and Inf. Op. to Morgan, September 28, 1992. In the interim, it has been suggested that agencies, faced with implementing the provisions of s. 119.071(4)(d), F.S., consider utilizing the definition of "law enforcement officer" contained in s. 784.07, F.S. *Id.* This statute, which imposes increased penalties for assault and battery on law enforcement officers, has a purpose similar to that of s. 119.071(4)(d), in that it seeks to

protect the safety of such individuals. "Law enforcement officer" is defined for purposes of s. 784.07(1)(d), F.S., to include:

[A] Law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; . . . and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

### **c. Polygraph records**

The Attorney General's Office is not aware of any statutory provision barring access to otherwise public records, simply because the records are in the form of polygraph charts. See, e.g., *Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992) (polygraph materials resulting from polygraph examination that citizen took in connection with a closed internal affairs investigation were public records); and *Downs v. Austin*, 522 So. 2d 931 (Fla. 1st DCA 1988) (because state had already publicly disclosed the results of polygraph tests administered to defendant's accomplice, the tests were not exempt criminal investigative or intelligence information and were subject to disclosure to the defendant).

However, a circuit court has noted that the exemption from disclosure found in s. 119.071(1)(a), F.S., for employment examination questions and answers could exempt some information contained in pre-employment polygraph records. See *Gillum v. Times Publishing Company*, No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991) (newspaper entitled to access to employment polygraph records "to the extent such records consist of polygraph machine graph strips and examiners' test results, including the bottom portion of the machine graph denoted 'Findings and Comments' or similar designation;" however, agency could redact "any examinee's actual answers to questions or summaries thereof" pursuant to the exemption for employment examination questions and answer sheets that is now found at s. 119.071[1][a], F.S.).

### **d. Undercover personnel**

Section 119.071(4)(c), F.S., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. *But see Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994) (police department should not have refused to release an entire police report containing some information that could lead to an undercover person's identity, when, without much difficulty, the name or initials and identification numbers of the undercover officer and that officer's supervisor could be taken out of the report and the remainder released). *Accord Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997).

## **12. Motor vehicle records**

### **a. Crash reports**

Motor vehicle crash reports are confidential for a period of 60 days after the report is filed. Section 316.066(3)(a), F.S. However, such reports may be made immediately available to the parties involved in the crash, their legal representatives, their insurance companies and agents, prosecutorial authorities, law enforcement agencies, county traffic operations, victims services programs, and certain print and broadcast media as described in the exemption. Section 316.066(3)(b), F.S. The owner of a vehicle involved in a crash is among those authorized to receive a copy of the crash report immediately. AGO 01-59.

In addition, the statute provides that any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties. Section 316.066(3)(c), F.S. *Cf.* AGOs 06-11 (fire department that is requesting crash reports in order to seek reimbursement from the at-fault driver, does not fall within the scope of this provision authorizing immediate access to the reports), and 09-22 (county not entitled to receive information contained in crash reports prepared pursuant to s. 316.066, F.S., based on its motor vehicle accident cost recovery fee ordinance).

"As a condition precedent to accessing a crash report within 60 days after the date the report is filed, a person must present a valid driver's license or other photographic identification, proof of status or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt." Section 316.066(3)(d), F.S. Reports may be released without the sworn statement to third-party vendors under contract with one or more insurers, but only if the conditions set forth in the statute are stated in the contract. *Id.* Third-degree felony penalties are established for knowingly unauthorized disclosure or use of confidential information in violation of this statute. See s. 316.066(4)(b), (c), and (d), F.S., for more information.

### **b. Department of Highway Safety and Motor Vehicles records**

Section 119.0712(2)(b), F.S., provides that 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. *Id.* *Cf. Rine v. Imagitas, Inc.*, 590 F.3d 1215 (11th Cir. 2009) (marketing company that pursuant to contract with the state mailed vehicle registration notices in envelopes containing advertisements and solicitations from company's client-advertisers to non-



consenting Florida drivers did not violate Driver's Privacy Protection Act of 1994).

Emergency contact information contained in a motor vehicle record is confidential and exempt, and, without the express consent of the person to whom such emergency contact information applies, may only be released to law enforcement agencies for purposes of contacting those listed in the event of an emergency. Section 119.0712(2)(c)1. and 2., F.S.

The term "motor vehicle record" is defined to mean 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 (DHSMV). Section 119.0712(2)(a), F.S. The Attorney General's Office has stated that while DHSMV motor vehicle records are confidential in the hands of a law enforcement agency, to the extent information is taken from DHSMV records and used in preparing other records of the law enforcement agency or its agent, the confidentiality requirements of s. 119.0712(2)(a), F.S., do not reach those records created by subsequent users. Thus, a driver's license number that is included in a law enforcement officer's report is not confidential or exempt from disclosure and copying. AGO 10-10. *And see* Inf. Op. to Rubin, May 12, 2010, advising that the statute does not act as a bar against the town producing copies of notices of infraction for speed zone violations issued pursuant to the town's street safety program.

The DHSMV, prior to disclosure of personal information pursuant to s. 119.0712(2), F.S., or the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq.*, may require the requestor to meet certain conditions for the purposes of obtaining reasonable assurance concerning the identity of the requestor 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. Section 119.0712(2)(d), F.S. Such conditions may include, but are not limited to, the making and filing of a written application in such form and containing such information and certification requirements as the department requires. *Id. And see* s. 316.066(3)(a), F.S., providing limitations on access to crash reports for a period of 60 days after the report is filed; and s. 322.142(4), F.S., restricting access to reproductions of color photographic or digital imaged driver's licenses.

### **13. Pawnbroker records**

All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant s. 539.001, F.S., the Florida Pawnbroking Act, are confidential and exempt from disclosure and may be used only for official law enforcement purposes. Section 539.003, F.S. However, law enforcement officials are not prohibited from disclosing the name and address of the pawnbroker, the name and address of the conveying customer, or a description of the pawned property to the alleged owner of pawned property. *Id. And see* AGO 01-51.

### **14. Prison and inmate records**

In the absence of statutory exemption, prison and inmate records are subject to disclosure under the Public Records Act. *Cf. Williams v. State*, 741 So. 2d 1248 (Fla. 2d

DCA 1999) (order imposing offender's habitual offender sentence and documents showing his qualifying convictions, subject to disclosure under Ch. 119). A discussion of some of the exemptions from disclosure follows; for a complete listing of exemption summaries, please refer to Appendix D.

Subject to limited exceptions, s. 945.10, F.S., states that the following records and information held by the Department of Corrections are confidential and exempt from public inspection: mental health, medical or substance abuse records of inmates; preplea, pretrial intervention, presentence or postsentence investigative records; information regarding a person in the federal witness protection program; confidential or exempt Parole Commission records; information which if released would jeopardize someone's safety; information concerning a victim's statement and identity; information which identifies an executioner; and records that are otherwise confidential or exempt by law. See *Bryan v. State*, 753 So. 2d 1244 (Fla. 2000), in which the Florida Supreme Court upheld the constitutionality of s. 945.10. See also *Roberts v. Singletary*, No. 96-603 (Fla. 2d Cir. Ct. July 28, 1997) (portions of the Department of Corrections Execution Procedures Manual containing "highly sensitive security information" not subject to disclosure). Cf. s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates in county and municipal detention facilities).

The Public Records Act applies to a private corporation which has contracted to operate and maintain the county jail. *Times Publishing Company v. Corrections Corporation of America*, No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), *per curiam affirmed*, 611 So. 2d 532 (Fla. 5th DCA 1993). See also *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204 (Fla. 2d DCA 1998), *review denied*, 727 So. 2d 909 (Fla. 1999) (records of private company under contract with sheriff to provide health care to jail inmates are subject to Ch. 119 just as if they were maintained by a public agency).

## **15. Resource inventories and emergency response plans**

Section 119.071(2)(d), F.S., exempts "[a]ny 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) . . ." See *Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885 (Fla. 3d DCA 2005), in which the court held that a city police department's Operational Plan prepared in response to intelligence reports warning of possible violence surrounding an economic summit remained exempt from disclosure after the summit ended. The court found that the city planned to use portions of the Plan for future events and the "language of [the exemption] leads us to believe that the legislature intended to keep such security information exempt after an immediate emergency passes." *Id.* at 887. And see s. 119.071(3)(a)1., F.S., which includes "emergency evacuation plans" and "sheltering arrangements" within the definition of a "security system plan" that is confidential and exempt from public disclosure.

## 16. Security system information and blueprints

### a. Security system information

Information relating to the security systems for property owned by or leased to the state or any of its political subdivisions is confidential and exempt from disclosure. Section 281.301, F.S. Exempt information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such security systems or information. *Id.* The exemption extends to information relating to or revealing the security systems for property owned or leased by the state or its political subdivisions, and also to security information concerning privately owned or leased property which is in the possession of an agency. AGOs 01-75 and 93-86. See also s. 331.22, F.S. (airport security plans) and s. 311.13, F.S. (seaport security plans).

Section 119.071(3)(a), F.S., provides a similar exemption from disclosure for a security system plan of a private or public entity that is held by an agency. However, the information may be disclosed to the property owner or leaseholder as well as to another state or federal agency to prevent, detect, or respond to an attempted or actual act of terrorism or for prosecution of such attempts or acts. *Id.*

The term "security system plan" includes: records relating directly to the physical security of the facility or revealing security systems; threat assessments conducted by an agency or private entity; threat response plans; emergency evacuation plans; sheltering arrangements; or security manuals. *Id.* *Cf.* s. 381.95, F.S., providing an exemption for information identifying the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the state's plan of defense against terrorism; and s. 395.1056, F.S., providing an exemption for those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism.

Sections 281.301 and 119.071(3)(a), F.S., prohibit public disclosure of the name and address of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms "because disclosure would imperil the safety of persons and property." *Critical Intervention Services, Inc. v. City of Clearwater*, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). *Accord* AGO 04-28.

### b. Blueprints

Section 119.071(3)(b)1., F.S., exempts building plans, blueprints, schematic drawings, and diagrams of government buildings. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the building, or upon a showing of good cause to a court. Section 119.071(3)(b)3., F.S. Exempt documents may also be released in order to comply with competitive bidding requirements. AGO 02-74. However, the entities or persons receiving such information must maintain its exempt status. *Id.* *And see* s. 119.071(3)(c)1., F.S. (exemption for

building plans, blueprints, schematic drawings and diagrams of various attractions, retail, resort, office, and industrial complexes and developments when the records are held by an agency). The exemption afforded by this statute, however, 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. Section 119.071(3)(c)4., F.S.

### **17. Surveillance techniques, procedures or personnel**

Information revealing surveillance techniques, procedures or personnel is exempt from public inspection pursuant to s. 119.071(2)(d), F.S. See *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010) (disclosure to criminal defendant of unredacted undercover police surveillance recordings does not destroy exemption in s. 119.071[2][d], F.S.; therefore, sheriff is only required to provide redacted recording in response to a public records request); and *State v. Bee Line Entertainment Partners Ltd.*, No. CIO 00-5358, 28 Med.L.Rptr. 2592 (Fla. 9th Cir. Ct. October 25, 2000) (videotapes created with hidden camera by law enforcement investigations showing result of investigative activity but that do not reveal confidential surveillance methods must be released once investigation is no longer active).

### **18. Victim information**

Although s. 119.071(2)(c), F.S., exempts active criminal investigative information from disclosure, the "name, sex, age, and address of . . . the victim of a crime, except as provided in s. 119.071(2)(h)," are specifically excluded from the definition of criminal investigative or intelligence information. See s. 119.011(3)(c)2., F.S. Accordingly, victim information is considered to be public record in the absence of statutory exemption. A discussion of the exemptions which apply to crime victims generally, and those which apply to the victims of certain crimes, follows. For a discussion of the exemptions that apply to records of juvenile offenders, please refer to s. G.10, *supra*.

#### **a. Amount of stolen property**

Pursuant to s. 119.071(2)(i), F.S., criminal intelligence or investigative information that reveals the personal assets of a crime victim, which were not involved in the crime, is exempt from disclosure. However, the Attorney General's Office has stated that this exemption does not apply to information relating to the amount of property stolen during the commission of a crime. AGO 82-30. Note, however, that s. 119.071(2)(j)1., F.S., provides that victims of certain crimes may file a written request to exempt information revealing their "personal assets."

#### **b. Commercial solicitation of victims**

Section 119.105, F.S., provides that police reports are public records except as otherwise made exempt or confidential and that every person is allowed to examine nonexempt or nonconfidential police reports. However, a person who comes into possession of exempt or confidential information in police reports may not use that information for commercial solicitation of the victims or relatives of the victims and may

not knowingly disclose such information to a third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. *Id.* The statute "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." *Id.* A willful and knowing violation of this statute is a third-degree felony. Section 19.10(2)(b), F.S. *And see* s. 316.650(11), F.S. (driver information contained in a uniform traffic citations shall not be used for commercial solicitation purposes); s. 327.301, F.S. (accident reports made by persons involved in vessel accidents may not be used for commercial solicitation purposes). *Cf. Los Angeles Police Department v. United Reporting Publishing Corporation*, 120 S.Ct. 483 (1999) (California statute that imposes conditions on public access to addresses of arrestees is not facially unconstitutional; the law does not abridge anyone's right to engage in speech but simply regulates access to information in the hands of the police department).

By contrast, s. 316.066(3)(a), F.S., restricts access to crash reports required by that section for a period of 60 days after the report is filed. However, such reports may be made immediately available to the parties involved in the crash and other entities as set forth in the exemption. *Id.* For more information about access to crash reports, please refer to the discussion on that topic in s. G.12(a), *supra*, in this manual.

### **c. Documents regarding victims which are *received* by an agency**

Section 119.071(2)(j)1., F.S., exempts from disclosure any document that reveals the identity, home or employment telephone number or address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, if that document is *received* by an agency that regularly receives information from or concerning the victims of crime. However, this provision is limited to documents *received* by agencies which regularly receive information from or concerning victims of crime; it does not apply to records generated or made by these agencies. AGO 90-80. Accordingly, this exemption does not apply to police reports. *Id.* Additionally, the exemption does not apply to documents revealing the identity of a victim of crime which are contained in a court file not closed by court order. AGO 90-87.

Section 119.071(2)(j)1., F.S., also provides that "[a]ny 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." See *Inf. Op. to McCabe*, November 27, 1995 (state attorney authorized to release materials received during an investigation of a domestic violence incident to a police department for use in the department's internal affairs investigation).

### **d. Home or employment address, telephone number, assets**

Victims of specified crimes listed in s. 119.071(2)(j)1., F.S., are authorized to file a written request for confidentiality of their addresses, telephone numbers and personal assets as follows:

Any information not otherwise held confidential or exempt [from disclosure]

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 disclosure] 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. (e.s.)

This exemption is not limited to documents *received* by an agency, but exempts specified information in records--whether generated or received by--an agency. Thus, a victim of the enumerated crimes may file a written request and have his or her home or employment telephone number, home or employment address, or personal assets, exempted from the police report of the crime, provided that the request includes official verification that an applicable crime has occurred as provided in the statute. *Criminal Law Alert*, Office of the Attorney General, June 29, 1995. The exemption is limited to the victim's address, telephone number, or personal assets; it does not apply to the victim's identity. *City of Gainesville v. Gainesville Sun Publishing Company*, No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996).

The incident report or offense report for one of the listed crimes may constitute "official verification that an applicable crime has occurred." *Criminal Law Alert*, Office of the Attorney General, June 29, 1995. In addition, the requirement that the victim make a written request for confidentiality applies only to information not otherwise held confidential by law; thus, the exemption supplements, but does not replace, other confidentiality provisions applicable to crime victims. *Id.* The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for confidentiality. AGO 96-82.

There is no exception to the provisions of s. 119.071(2)(j)1., F.S., for copies of the police report that are sent to domestic violence centers; thus, the victim's address and telephone number must be deleted from the copy of the police report that is sent to a domestic violence center pursuant to s. 741.29, F.S., if the victim has made a written request for confidentiality pursuant to s. 119.071(2)(j)1., F.S. AGO 02-50.

## **e. Information revealing the identity of victims of sex offenses and of child abuse**

### **(1) Law enforcement and prosecution records**

Section 119.071(2)(h)1., F.S., provides a comprehensive exemption from disclosure for information which would reveal the identity of victims of sexual offenses prohibited in Chs. 794, 796, 800, 827 or 847, F.S., or of child abuse as proscribed in Ch. 827, F.S. The exemption includes the "photograph, name, address, or other fact or information" which would reveal the identity of the victim of these crimes. The exemption applies to "any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings," which may reveal the victim's identity. *Id.*

In addition, the photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under Chs. 794, 796, 800, 827 or 847, F.S., is confidential and exempt, regardless of whether the photograph, videotape, or image identifies the victim. Section 119.071(2)(h)1.c., F.S.

Section 119.071(2)(j)2., F.S., provides that identifying information in a videotaped statement of a minor who is alleged to be or who is a victim of a sexual offense prohibited in the cited laws which reveals the 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 the minor as a victim, held by a law enforcement agency, is confidential. Access shall be provided, however, to authorized governmental agencies when necessary to the furtherance of the agency's duties. *Id.*

Thus, information revealing the identity of victims of child abuse or sexual battery must be deleted from the copy of the report of domestic violence which is sent by a law enforcement agency to the nearest domestic violence center pursuant to s. 741.29(2), F.S. AGO 92-14. *And see Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001), applying exemption to information identifying a child abuse victim which was contained in files prepared as part of an internal investigation conducted in accordance with s. 112.533, F.S.

However, the identity of a child abuse victim who *died* from suspected abuse is not confidential. AGO 90-103.

A public employee or officer having access to the photograph, name, or address of a person alleged to be a victim of an offense described in Ch. 794 (sexual battery); Ch. 800 (lewdness, indecent exposure); s. 827.03 (child abuse); s. 827.04 (contributing to delinquency or dependency of a child); or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim. Section 794.024(1), F.S. A violation of this section constitutes a second degree misdemeanor. Section 794.024(2), F.S. *Cf. State v. Globe Communications Corporation*, 648 So. 2d 110, 111 (Fla. 1994) (statute mandating criminal sanctions for printing, publishing or broadcasting "in any instrument of mass communication" information identifying a victim of a sexual offense, ruled unconstitutional).

An entity or individual who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information concerning the victim of any sexual offense under Ch. 794 or Ch. 800 shall be liable to the victim for all damages reasonably necessary to compensate the victim for any injuries suffered as a result of such communication. Section 794.026(1), F.S. The victim, however, may not maintain a cause of action unless he or she is able to show that such communication

was intentional and was done with reckless disregard for the highly offensive nature of the publication. Section 794.026(2), F.S. *Cf. Cox Broadcasting Corp. v. Cohn*, 95 S.Ct. 1029 (1975); and *Cape Publications, Inc. v. Hitchner*, 549 So. 2d 1374 (Fla. 1989), *appeal dismissed*, 110 S.Ct. 296 (1989).

The Crime Victims' Services Office in the Attorney General's Office is authorized to receive confidential records from law enforcement and prosecutorial agencies. Section 960.05(2)(k), F.S. *And see* AGO 92-51 (city victim services division, as a governmental agency which is part of the city's criminal justice system, may receive identifying information about victims of sex offenses, for the purpose of advising the victim of available services pursuant to s. 960.001, F.S., requiring distribution of victim support information).

## **(2) Court records**

The Legislature intended to make the identity of a victim of a sexual offense confidential in court records. AGO 03-56. *See* s. 119.0714(1)(h), F.S.

Section 92.56, F.S., provides that criminal intelligence information or criminal investigative information made confidential pursuant to s. 119.071(2)(h) must be maintained in court records and in court proceedings, including witnesses' testimony. If a petition for access to these records is filed with the trial court with jurisdiction over alleged offense, the status of the information must be maintained by the court if the state or the victim demonstrate certain factors as set forth in the statute. Section 92.56(1), F.S. A person who willfully and knowingly violates section 92.56, F.S., or any court order issued under this section is subject to contempt proceedings. Section 92.56(6), F.S.

## **(3) Department of Children and Family Services abuse records**

As discussed in s. K. of this manual, there are statutory exemptions set forth in Ch. 415, F.S., which relate to records of abuse of vulnerable adults. Similar provisions relating to child abuse records are found in Ch. 39, F.S. The Attorney General's Office has concluded that the confidentiality provisions in these laws, *i.e.*, s.s. 415.107 and 39.202, F.S., apply to records of the Department of Children and Family Services and do not encompass a law enforcement agency's *arrest* report of persons charged with criminal child abuse, after the agency has deleted all information which would reveal the identity of the victim. *See* AGO 93-54. *Accord* Inf. Op. to O'Brien, January 18, 1994. *Cf. Times Publishing Company v. A.J.*, 626 So. 2d 1314 (Fla. 1993), holding that a sheriff's incident report of alleged child abuse that was forwarded to the state child welfare department for investigation pursuant to Ch. 415, F.S. 1990 [see now Part II, Ch. 39, F.S., entitled "Reporting Child Abuse"], should not be released. The Court noted that the department had found no probable cause and that child protection statutes accommodate privacy rights of those involved in these cases "by providing that the supposed victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found." *Id.* at 1315.

Section 39.202(1), and (2)(b), F.S., authorizes criminal justice agencies to have



access to confidential abuse, abandonment, or neglect records held by the Department of Children and Family Services and provides that the exemption from disclosure for department abuse records also applies to department records and information in the possession of the agencies granted access. See Inf. Op. to Russell, October 24, 2001.

#### **f. Relocated victim or witness information**

Information held by a law enforcement agency, prosecutorial agency, or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. The identity and location of immediate family members of such victims or witnesses are also protected, as are relocation sites, techniques or procedures utilized or developed as a result of the victim and witness protective services. Section 914.27, F.S.

### **H. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO BIRTH AND DEATH RECORDS?**

A number of exemptions exist for adoption, birth, and death records. For a complete listing, please refer to Appendix D.

#### **1. Birth and adoption records**

Except for birth records over 100 years old which are not under seal pursuant to court order, all birth records are considered to be confidential documents and exempt from public inspection; such records may be disclosed only as provided by law. Section 382.025(1), F.S.; AGO 74-70. *Cf.* s. 383.51, F.S. (the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, F.S., is confidential).

Adoption records are confidential and may not be disclosed except as provided in s. 63.162, F.S. An unadopted individual, however, has the right to obtain his or her birth records which include the names of the individual's parents from the hospital in which he or she was born. *Atwell v. Sacred Heart Hospital of Pensacola*, 520 So. 2d 30 (Fla. 1988).

In the absence of court order issued for good cause shown, the name and identity of a birth parent, an adoptive parent, or an adoptee may not be disclosed unless the birth parent authorizes in writing the release of his or her name; the adoptee, if 18 or older, authorizes in writing the release of his or her name; or, if the adoptee is less than 18, written consent is obtained from an adoptive parent to disclose the adoptee's name; or the adoptive parent authorizes in writing the release of his or her name. Section 63.162(4), F.S. *And see* s. 63.165(1), F.S. (state adoption registry); and s. 63.0541, F.S. (putative father registry).

#### **2. Death certificates**

Information relating to cause of death in all death and fetal death records, and the parentage, marital status, and medical information of fetal death records are confidential and exempt from s. 119.07(1), F.S., except for health research purposes as approved

by the Department of Health. Section 382.008(6), F.S. *Cf. Yeste v. Miami Herald Publishing Co.*, 451 So. 2d 491 (Fla. 3d DCA 1984), *review denied*, 461 So. 2d 115 (Fla. 1984) (medical certification of the cause of death in the death certificate is confidential). *And see* s. 382.025(2)(a), F.S., providing for the issuance of a certified copy of a death or fetal death certificate, excluding the portion that is confidential pursuant to s. 382.008, F.S., and specifying those persons and governmental agencies authorized to receive a copy of a death certificate that includes the confidential portions. All portions of a death certificate cease to be exempt 50 years after the death. Section 382.025(2)(b), F.S.

By contrast, autopsy reports prepared by a district medical examiner pursuant to Ch. 406, F.S., have been held to be subject to public inspection. *See Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997); and AGO 78-23. For more information about autopsy reports, please refer to s. G.2, of this manual.

## **I. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO HOSPITAL AND MEDICAL RECORDS?**

There are many exemptions for hospital and medical records. For a more complete listing, please refer to the exemption summaries contained in Appendix D.

### **1. Communicable or infectious disease reports**

A number of exemptions exist for communicable or infectious disease reports. *E.g.*, s. 381.0031(4), F.S. (information submitted in public health reports to Department of Health is confidential and is to be made public only when necessary to public health); s. 384.29, F.S. (sexually transmissible diseases); s. 466.041(3), F.S. (reports of hepatitis B carrier status filed by a dentist). *See Ocala Star-Banner v. State*, 697 So. 2d 1317 (Fla. 5th DCA 1997) (upholding court order sealing portions of a battery prosecution case file pertaining to transmission of sexually transmissible diseases to victims due to s. 384.29, F.S., confidentiality requirements). However, notwithstanding any other provision of law to the contrary, the Department of Health, the Department of Children and Family Services, and the Agency for Persons with Disabilities may share confidential information on any individual who is or has been the subject of a program within the jurisdiction of each agency. Sections 381.0022 and 402.115, F.S. The shared information remains confidential or exempt as provided by law. *Id. See* AGO 98-52.

Results of screenings for sexually transmissible diseases conducted by the Department of Health in accordance with s. 384.287, F.S., may be released only to those persons specified in the exemption. Section 384.287(5), F.S. A person who receives the results of a test pursuant to this section, which results disclose human immunodeficiency virus (HIV) infection and are otherwise confidential pursuant to law, shall maintain the confidentiality of the information received and the identity of the person tested as required by s. 381.004, F.S.; violation of this subsection is a first degree misdemeanor. Section 384.287(6), F.S.

Notification to an emergency medical technician, paramedic or other person that a patient they treated or transported has an infectious disease must be done in a manner

to protect the confidentiality of patient information and shall not include the patient's name. Section 395.1025, F.S.

There are strict confidentiality requirements for test results for HIV infection; such information may be released only as expressly prescribed by statute. See s. 381.004, F.S. Any person who violates the confidentiality provisions of s. 381.004, F.S., and s. 951.27, F.S., is guilty of a first degree misdemeanor. Section 381.004(6)(b), F.S. *And see* s. 381.004(6)(c), F.S., establishing felony penalties for disclosure in certain circumstances. Thus, information received by the clerk of court indicating that an individual has complied with an order to be tested for HIV and the attendant test results "would appear to be confidential and should be maintained in that status." AGO 00-54. *Cf. Florida Department of Corrections v. Abril*, 969 So. 2d 201 (Fla. 2007) (an entity that negligently violates a patient's right of confidentiality in disclosing the results of HIV testing may be held responsible in a negligence action).

HIV tests performed on persons charged with certain offenses may not be disclosed to any person other than the defendant, and upon request, the victim or the victim's legal guardian, or if the victim is a minor, the victim's parent or legal guardian, and to public health agencies pursuant to s. 775.0877, F.S., except as expressly authorized by law or court order. If the alleged offender is a juvenile, the test results shall also be disclosed to the parent or guardian. Section 960.003, F.S. *See also* s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates in county and municipal detention facilities, as provided in statute).

## **2. Emergency medical services**

With limited exceptions, s. 401.30(4), F.S., provides, in relevant part, that "[r]ecords of emergency calls which contain patient examination or treatment information are confidential and exempt from the provisions of s. 119.07(1) and may not be disclosed without the consent of the person to whom they pertain." Such records may be released only in certain circumstances and only to the persons and entities specified in the statute. AGO 86-97. Thus, a city commissioner is not authorized to review records of an emergency call by the city's fire-rescue department when those records contain patient examination and treatment information, except with the consent of the patient. AGO 04-09. *See Lee County v. State Farm Mutual Automobile Insurance Company*, 634 So. 2d 250 (Fla. 2d DCA 1994), upholding the county's right to require the patient's notarized signature on all release forms, to ensure that these confidential records are not improperly released. *And see* AGO 09-30 (entire record of emergency call containing patient examination and treatment information which is maintained as required by s. 401.30[1], F.S., is confidential and exempt; reports containing statistical data, required by the Department of Health, are public records and must be made available for inspection and copying following redaction of any patient-identifying information).

However, s. 401.30(4), is not violated by the city attorney, or an attorney under contract to the city, and other city officials having access to the city fire-rescue department's records of emergency calls that contain patient information when such access is granted to such individuals in carrying out their official duties to advise and

defend, or assess the liability of, the city in a possible or anticipated claim against the city arising out of the provision of such care. AGO 95-75. *And see* AGO 08-20 (s. 401.30[4], F.S., permits emergency medical services transportation licensee to release records of emergency calls including patient's name, address, and pertinent medical information to local law enforcement agency that does not provide regulatory or supervisory responsibility over licensee).

Reports to the Department of Health from service providers that cover statistical data are public except that the names of patients and other patient-identifying information contained in such reports are confidential and exempt from s. 119.07(1), F.S. Section 401.30(3), F.S.

### **3. Hospital records**

#### **a. Public hospitals**

Like other governmental agency records, public hospital records are subject to disclosure in the absence of a statutory exemption. AGO 72-59. For example, the court in *Tribune Company v. Hardee Memorial Hospital*, No. CA 91-370 (Fla. 10th Cir. Ct. August 19, 1991), held that a settlement agreement entered in a lawsuit against the public hospital alleging that the hospital had swapped babies was a public record. The court held that the agreement was subject to disclosure despite a confidentiality provision contained within the agreement and claims by the hospital that it constituted work product.

In recent years, however, an increasing number of exemptions have been created for hospital records. A discussion of exemptions follows:

#### **(1) Employee evaluations and personal identification information**

Section 395.3025(9), F.S., authorizes hospitals to prescribe the content of limited access employee records which are not available for disclosure for 5 years after such designation. Such records are limited to evaluations of employee performance, including records forming the basis for evaluation and subsequent actions. *See Times Publishing Company v. Tampa General Hospital*, No. 93-03362 (Fla. 13th Cir. Ct. May 27, 1993) (s. 395.3025[9] exemption does not apply to list of terminated hospital employees; hospital ordered to allow newspaper to inspect list and personnel files of those persons named in list after "limited access" documents have been removed).

Home addresses, telephone numbers, and photographs of certain hospital employees, as well as specified personal information about the spouses and children of such employees, are also confidential. *See* ss. 395.3025(10) and (11), F.S.

All personal identifying information contained in records provided by physicians licensed under Ch. 458 or 459 in response to physician workforce surveys required as a condition for license renewal and held by the Department of Health is confidential and exempt, except as otherwise provided. Section s. 458.3193, F.S. (also published as s. 459.0083, F.S.)

## **(2) Proprietary business records**

The following public hospital records and information are confidential and exempt from disclosure: contracts for managed care arrangements under which the public hospital provides health care services and any documents directly relating to the negotiation, performance, and implementation of such contracts; certain strategic plans; trade secrets as defined in s. 688.002; and documents, offers, and contracts (not including managed care contracts) that are the product of negotiations with nongovernmental entities for the payment of services when such negotiations concern services that are or may reasonably be expected to be provided by the hospital's competitors, provided that if the hospital's governing board is required to vote on the documents. This exemption expires 30 days prior to the date of the meeting when the vote is scheduled to take place. Section 395.3035(2), F.S. Cf. AGO 92-56, concluding that the exemptions must be strictly construed.

## **(3) Quality assurance records**

Quality assurance or improvement records are generally confidential and not subject to disclosure. See, e.g., s. 394.907(7), F.S. (community mental health centers and facilities); s. 397.419(5) (substance abuse service providers); s. 401.425(5), F.S. (emergency medical services); s. 641.55(5)(c), F.S. (health maintenance organizations). See also s. 395.0193(7), F.S. (records of peer review panels, committees, governing bodies, or agent thereof, of hospitals or ambulatory surgical centers which relate to disciplinary proceedings against staff not subject to s. 119.07[1], F.S.); s. 395.0197(7), F.S. (adverse incident report submitted to the Agency for Health Care Administration shall not be available to the public); s. 395.4025(12), F.S. (patient care quality assurance reports made pursuant to enumerated statutes shall be held confidential by the Department of Health or its agent); and s. 400.119(1) and (2)(b), F.S. (specified incident reports and records of meetings of a risk management and quality assurance committee of a long-term care facility are confidential). *But see* Art. X, s. 25, Fla. Const., and s. 381.028, F.S., authorizing patients to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident. *And see Florida Hospital Waterman, Inc. v. Buster, supra* (amendment creating Art. I, s. 25, Fla. Const., was intended to apply to existing records).

### **b. Private hospitals/private organizations operating public hospitals**

A private organization leasing the facilities of a public hospital is acting on behalf of a public agency and thus constitutes an agency subject to open records requirements in the absence of statutory exemption. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373 (Fla. 1999). See also s. C.2., of this manual, discussing the applicability of the Public Records Act to private organizations providing services to public agencies.

Section 395.3036, F.S., however, provides that records of a private corporation that leases a public hospital or other public health care facility are confidential and exempt from disclosure when the public lessor complies with the public finance accountability

provisions of s. 155.40(5), F.S., with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of five criteria set forth in the exemption. See *Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233 (Fla. 4th DCA 2000) (nonprofit corporation leasing hospital from hospital district is exempt from the open government laws). And see *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), upholding the constitutionality of the exemption. Cf. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 927 So. 2d 961 (Fla. 5th DCA 2006) (private corporation that purchased hospital from public hospital authority not subject to Public Records Act) and s. 155.40(8), F.S., describing and construing the term "complete sale" as applied to a purchase of a public hospital by a private entity.

#### **4. Patient records**

Patient records are generally protected from disclosure. For example, patient records in hospitals or ambulatory surgical centers licensed under Ch. 395, F.S., are confidential and may not be disclosed without the consent of the patient, or the patient's legal representative, except as provided in the statute. Section 395.3025(4), (5), (7) and (8), F.S. And see s. 400.022(1)(m), F.S. (nursing home residents' medical and personal records); s. 400.611(3), F.S. (hospice); and s. 383.32(3), F.S. (birth centers). See *State v. Johnson*, 814 So. 2d 390 (Fla. 2002) (state attorney's subpoena power under s. 27.04, F.S., cannot override notice requirements of s. 395.3025(4)(d), F.S., which provides for disclosure of confidential patient records upon issuance of subpoena and upon proper notice to the patient or the patient's legal representative). Cf. s. 408.051(3), F.S., permitting a health care provider to release or access an identifiable health record of a patient without the patient's consent for use in the treatment of the patient for an emergency medical condition, as defined in s. 395.002(8), F.S., when the health care provider is unable to obtain the patient's consent or the consent of the patient representative due to the patient's condition or the nature of the situation requiring immediate medical attention.

Patient medical records made by health care practitioners may not be furnished to any person other than the patient, his or her legal representative or other health care practitioners and providers involved in the patient's care and treatment without written authorization except as provided by ss. 440.13(4)(c) and 456.057, F.S. Section 456.057(7)(a), F.S.

The recipient of patient records, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. See ss. 395.3025(7)(hospital patient records) and 456.057(12), F.S. (health care practitioner patient records). Thus, predeath medical records in the possession of the medical examiner are not subject to public inspection. *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997).

Patient clinical records are also protected. See, e.g., s. 393.13(4)(i)1., F.S. (central client records of persons with developmental disabilities); s. 394.4615(1), F.S. (clinical

records of persons subject to "The Baker Act"); s. 397.501(7), F.S. (individuals receiving services from substance abuse service providers); s. 916.107(8), F.S. (forensic clients). Such records maintain their confidentiality even when disclosed to another agency such as the clerk of the circuit court. AGO 9 1-10. *And see Sarasota Herald-Tribune v. Department of Children and Families*, No. 2001-CA-002445 ( Fla. 2d Cir. Ct. April 8 , 2002) (confidentiality of clinical records maintained even though Department of Children and Families may have filed portions of the records in court proceedings throughout the state; department has no authority to waive confidentiality of clinical records).

Except as provided in the exemption, 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. Section 119.0712(1), F.S. *And see* s. 119.0713(2), F.S. (personal identifying information contained in records relating to a person's health held by local governmental entities for purposes of determining eligibility for paratransit services under the Americans with Disabilities Act); and s. 408.7056(14), F.S. (subscriber-identifying information contained in records held by the subscriber assistance panel, Department of Financial Services, or state health care agency). *Cf.* AGO 0 1-69 (documents submitted to the statewide provider and managed care organization claim dispute resolution program pursuant to s. 408.7057, F.S., found to be subject to disclosure after redaction of patient-identifying information)

Certain identification and location information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner; a pharmacist, or a pharmacy, that is contained in Department of Health records under the electronic prescription drug monitoring program for monitoring the prescribing and dispensing of controlled substances are confidential and exempt from disclosure. Section 893.0551(2), F.S.

## **5. Anatomical gifts donor records**

The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles must jointly contract for the operation of an anatomical gifts donor registry. Section 765.5155(2), F.S. Information held in the donor registry which identifies a donor is confidential and exempt but may be disclosed to certain specified individuals including procurement organizations certified by the Agency for Health Care Administration and persons engaged in bona fide research. Section 765.51551(1), F.S.

## **J. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO EDUCATION RECORDS?**

There are statutory exemptions which remove some education records from disclosure. A discussion of exemptions relating to education records follows; for a more complete listing of exemption summaries, please refer to Appendix D.

### **1. Direct-support organizations**

Several statutes exempt information identifying donor student direct-support

organizations associated with education agencies. The identity of donors to a direct-support organization of the Department of Education or of a district school board, and all information identifying such donors and prospective donors, are confidential and exempt from the provisions of s. 119.07(1), F.S.; that anonymity is required to be maintained in the auditor's report. See s. 1001.24(4), F.S. (Department of Education direct-support organization); s. 1001.453(4), F.S. (district school board direct-support organization). Cf. 267.1736(9)(a), F.S. (direct-support organization authorized to assist the University of Florida regarding historic preservation and education for the City of St. Augustine).

The identity of donors to a university or community college direct-support organization *who wish* to remain anonymous is protected by statute which also requires that such anonymity be maintained in the auditor's report. Sections 1004.28(5) and 1004.70(6), F.S. *And see* s. 1004.71(6), F.S. (statewide community college direct-support organization); s. 1009.983(4), F.S. (Florida Prepaid College Board).

In addition, other records of such organizations are made confidential by statute. All records of university direct-support organizations, other than the auditor's report, management letter, and any supplemental data requested by the Board of Governors, the Auditor General, board of trustees, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) are confidential and exempt from s. 119.07(1), F.S. Section 1004.28(5), F.S. *And see* s. 1001.24(4), F.S. (records of a direct-support organization of the Department of Education). However, all records of a district school board direct-support organization, other than donor-identifying information, are expressly made subject to Ch. 119, F.S. See s. 1001.453(4), F.S.

Records of community college direct-support organizations, other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and OPPAGA, are confidential and exempt from s. 119.07(1), F.S. Section 1004.70(6), F.S. See *Palm Beach Community College Foundation, Inc. v. WFTV*, 611 So. 2d 588 (Fla. 4th DCA 1993) (direct-support organization's expense records are public records subject to deletion of donor-identifying information). Cf. AGO 05-27 (Sunshine Law applies to community college direct-support organization as defined in s. 1004.70, F.S.).

Information received by the direct-support organization of the Florida Prepaid College Program that is otherwise confidential or exempt shall retain such status and any sensitive, personal information regarding contract beneficiaries, including their identities, is exempt from disclosure. Section 1009.983(4), F.S.

## **2. Education personnel records**

In the absence of statutory exemption, personnel records of educators are subject to public inspection. For example, the judiciary is not authorized to create an exemption for the home addresses and home telephone numbers of public school system personnel. *United Teachers of Dade v. School Board of Dade County*, No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992). However, there are a number of statutory exemptions which apply to school personnel records. See *Florida Department of Education v. NYT*



*Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal law does not authorize newspaper to obtain social security numbers in state teacher certification database).

#### **a. Public school personnel**

Complaints against a teacher or administrator and all information obtained by the Department of Education pursuant to its investigation of the complaint are exempt from s. 119.07(1), F.S., until the conclusion of the preliminary investigation, the investigation ceases to be active, or as otherwise provided by s. 1012.798(6), F.S. Section 1012.796(4), F.S. The complaint and material assembled during the investigation, however, may be inspected and copied by the individual under investigation or his designee after the investigation is concluded but prior to the determination of probable cause. *Id.* Information obtained by the recovery network program within the Department of Education from a treatment provider which relates to a person's impairment and participation in the program is confidential and exempt from s. 119.07(1), F.S. Section 1012.798(9), F.S.

Public school system employee personnel files, like those of other government employees, are generally open to public inspection, subject to certain exceptions as set forth in s. 1012.31(3), complaint are confidential until the preliminary investigation is either concluded or ceases to be active. Section 1012.31(3)(a)1., F.S. See AGO 91-75 (while exemption applies when a complaint against a district employee has been filed and an investigation against that employee ensues, it does not provide a basis for withholding documents compiled in a general investigation of school departments). *And see* AGO 08-24 (names, home addresses, telephone numbers, photographs and places of employment of spouses of active or former law enforcement personnel exempt under s. 119.071(4)(d)1., F.S., and maintained in school district records, are exempt from disclosure and are not required to be provided to certified bargaining representative under s. 447.203[8], F.S.). *Cf. Johnson v. Deluz*, 875 So. 2d 1 (Fla. 4th DCA 2004) (student identifying information must be redacted from public report of investigation of school principal).

Employee evaluations prepared pursuant to cited statutes are confidential and exempt from disclosure until the end of the school year immediately following the school year during which the evaluation was made, provided that no evaluations made prior to July 1, 1983, shall be made public. Section 1012.31(3)(a)2., F.S. However, information obtained from evaluation forms circulated by the local teacher's union to its members that is provided unsolicited to the superintendent is not exempt under this statute. AGO 94-94. Written comments and performance memoranda prepared by individual school board members regarding an appointed superintendent are not exempt from disclosure. AGO 97-23.

Employee pay roll deduction records and medical records are confidential and exempt. Section 1012.31(3)(a)4. and 5., F.S. See AGO 09-11 (tax information of a public school system employee is a pay roll deduction record and is confidential and exempt from disclosure pursuant to s. 1012.31). However, the personnel file is open at all times to school board members, the superintendent, or the principal, or their

respective designees in the exercise of their duties, and to law enforcement personnel in the conduct of a lawful criminal investigation. Section 1012.31(3)(b) and (c), F.S.

No material derogatory to a public school employee shall be open to inspection until 10 days after the employee has been notified as prescribed by statute. Section 1012.31(3)(a)3., F.S. While s. 1012.31(1)(b), F.S., prohibits placing anonymous letters and material in an employee's personnel file, the statute does not prevent a school board from investigating the allegations contained in an anonymous letter nor does it permit the school board to destroy the anonymous material absent compliance with statutory restrictions on destruction of public records. AGO 87-48.

Criminal history record information shared with a public school district pursuant to s. 231.02, F.S., [now s. 1012.32, F.S.] by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection. AGO 99-01. However, information developed by the school district from further inquiry into references in the federal criminal history record information is a public record which should be included in a school district employee's personnel file. *Id.*

#### **b. University and community college personnel**

Limited-access records maintained by a state university on its employees are confidential and exempt from s. 119.07(1), F.S., and may be released only upon authorization in writing from the employee or upon court order. Without such authorization, access to the records is limited to university personnel as specified in the statute. Section 1012.91, F.S.

Until July 1, 1995, state universities were authorized to prescribe the content and custody of limited-access records maintained on their employees, provided that such records were limited to information reflecting evaluations of employee performance. See *Cantanese v. Ceros-Livingston*, 599 So. 2d 1021 (Fla. 4th DCA 1992), *review denied*, 613 So. 2d 2 (Fla. 1992) (copies of minutes and other documentation indicating votes on tenure or promotion applications of university employees are exempt); and *Tallahassee Democrat, Inc. v. Florida Board of Regents*, 314 So. 2d 164 (Fla. 1st DCA 1975) (investigative report about university athletic staff held confidential).

In 1995, the law was amended to specify that "limited-access records" are limited to: information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee; records relating to an investigation of employee misconduct which records are confidential until the conclusion of the investigation or the investigation ceases to be active as defined in the law; and records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made. For sexual harassment investigations, portions of the records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records. Records which comprise the common core items contained in the State University

System Student Assessment of Instruction instrument may not be prescribed as limited-access records. Section 1012.91(4), F.S. These provisions apply to records created after July 1, 1995. Section 1012.91(5), F.S.

Regarding community college personnel, s. 1012.81, F.S., states that rules of the State Board of Education shall prescribe the content and custody of limited-access records maintained by a community college on its employees. Such records "shall be limited to information reflecting evaluations of employee performance and shall be open to inspection only by the employee and by officials of the college who are responsible for supervision of the employee." The limited-access records are confidential and exempt and may be released only as authorized in the statute.

### **3. Examination materials**

Testing materials are generally exempt from the disclosure provisions of s. 119.07(1), F.S. See, e.g., s. 1008.345(7)(h), F.S. (tests and related documents developed to measure and diagnose student achievement of college-level communication and mathematics skills); s. 1012.56(8)(e), F.S. (state-developed educator certification examination, developmental materials and workpapers); s. 1012.56(8)(g), F.S. (examination instruments, including related developmental materials and workpapers, prepared or administered pursuant to s. 1012.56, F.S., relating to educator certification); and s. 1008.23, F.S. (examination and assessment instruments, including developmental materials and workpapers directly related to such instruments, which are prepared or administered pursuant to cited statutes). *Cf. Florida Department of Education v. Cooper*, 858 So. 2d 394 (Fla. 1st DCA 2003) (Florida Comprehensive Achievement Test [FCAT] test instruments, consisting of the test booklet and questions, as distinguished from the test score, are confidential and do not constitute "student records" which must be provided to student, parent, or guardian upon request). *And see* AGO 09-35 concluding that student assessment tests developed by teachers to measure student preparedness for college board advanced placement exams are confidential and exempt from the inspection and copying requirements of Ch. 119, F.S. *Cf. s. 1008.24(3)(b)*, F.S. (identity of a school or postsecondary educational institution, personally identifiable information of personnel of a school or postsecondary educational institution, or allegations of misconduct obtained or reported in connection with an investigation of a testing impropriety conducted by the Department of Education are confidential and exempt from disclosure until the investigation is concluded or becomes inactive).

### **4. Student records**

Access to student records is limited by statute. In 2009, the Legislature revised the state statutes relating to student records to incorporate the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g. "Education records" are defined by FERPA to mean "those records, files, documents, and other materials" (except as otherwise provided in 20 U.S.C. s. 1232g[a][4][B]), which contain "information *directly* related to a student" and "are maintained by an educational agency or institution or by a person acting for such agency or institution." (e.s.) 20 U.S.C. s. 1232g(a)(4)(A). *And see* 34 C.F.R. Part 99 for regulations implementing FERPA.

For education records of students in elementary and secondary schools, section 1002.22(2), F.S., guarantees students and their parents the right to have education records created, maintained or used by public educational institutions and agencies protected in accordance with the FERPA, the implementing regulations issued pursuant to this act, and s. 1002.22, F.S. See s. 1002.22(1), F.S., defining "Agency" and "Institution." Section 1002.22, F.S., also applies to records of any defunct non public educational institution that has deposited its student records with the district school superintendent in the county where the institution was located. Section 1002.22(5), F.S.

Section 1002.221, F.S., provides that education records are confidential and prohibits an agency, as defined in s. 1002.22(1)(a), F.S., or a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4), from releasing a student's education records (as defined in FERPA and implementing regulations) without the student's or parent's written consent, except as permitted by FERPA, or to the Auditor General or the Office of Program Policy Analysis and Government Accountability, when necessary for such agencies to perform their official duties and responsibilities. *But see* s. 1002.221(2)(b), F.S., permitting an agency to release student education records without the written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies.

Public postsecondary educational institutions are required to comply with FERPA with respect to the education records of students. Section 1002.225(2), F.S. Section 1006.52(1), F.S., authorizes a public postsecondary educational institution to prescribe the content and custody of records the institution maintains on its students and applicants for admission. A student's education records and applicant records are confidential and exempt. *Id.* A public postsecondary educational institution may not release a student's education records without the written consent of the student except as permitted by FERPA or to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities.

In *National Collegiate Athletic Association v. The Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), considered FERPA and 2009 amendments to the Florida Statutes. Recognizing that under FERPA a record "qualifies as an educational record only if it 'directly' relates to a student" and relying on several federal and out-of-state cases, the court agreed with the lower court's conclusion that a transcript of a NCAA hearing and a NCAA committee response pertained to allegations of misconduct by the university athletic department and only tangentially related to students. Recognizing that federal and several out-of-state courts have concluded FERPA does not prohibit the release of records so long as the student identifying information is redacted, the NCAA court also held that the transcript and the response would not be protected since the requested records had been redacted to remove student identifying information and thus did not disclose education records. *Cf.* Inf. Op. to Stabins, June 12, 1997 (teacher grade books are not student "records" or "reports" for purposes of statutory provision establishing that a student or parent had a right to be shown any "record or report relating to such student"; see *now* s.

1002.22(2)(a), F.S., stating that students and their parents have the right to inspect and review the student's education records).

Section 119.071(5)(c), F.S., exempts information that would identify or locate a child, or the parent or guardian of a child, participating in a government-sponsored recreation program from s. 119.07, F.S., and Art. I, s. 24(a), Fla. Const.

In AGO 01-64 the Attorney General, in interpreting the former statutes, stated that a felony complaint/arrest affidavit created and maintained by school police officers for a juvenile or adult who is a student in the public schools is a law enforcement record subject to disclosure, provided that exempt information such as active criminal investigative information is deleted prior to release. See *now* 20 U. S.C. 1232g(a)(4)(B)(ii) excluding "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement" from the definition of "education records."

## **5. Charter schools**

Section 1002.33(16)(b), F.S., provides that charter schools are subject to the Public Records Act and the Sunshine Law. The open government laws apply regardless of whether the charter school operates as a public or private entity. AGO 98-48. The records and meetings of a not-for-profit corporation granted charter school status are subject to the requirements of Ch. 119, F.S., and s. 286.011, F.S., even though the charter school has not yet opened its doors to students. AGO 01-23. *And see* AGO 2010-14 (records of team created by charter school to review personnel decisions subject to Ch. 119, F.S.).

## **6. School readiness programs**

Early learning coalitions (formerly known as school readiness coalitions) created pursuant to s. 411.01(5), F.S., are subject to the open government laws. AGO 01-86. Individual records of children enrolled in school readiness programs provided under s. 411.01, held by an early learning coalition or the Agency for Workforce Innovation are confidential. Section 411.011, F.S. *And see* s. 1002.72, F.S. (records of children enrolled in the Voluntary Prekindergarten Education Program).

## **K. WHAT ARE THE STATUTORY EXEMPTIONS RELATING TO ABUSE RECORDS?**

There are confidentiality statutes which apply to records of abuse of children or vulnerable adults which are received by the Department of Children and Family Services. A discussion of exemptions relating to abuse records follows; for a more complete listing of exemption summaries, please refer to Appendix D.

### **1. Records of abuse of children and vulnerable adults**

#### **a. Confidentiality of abuse records**

Generally, reports of abused children or vulnerable adults which are received by the Department of Children and Family Services (DCF) are confidential and exempt from

disclosure, except as expressly provided by statute. See ss. 39.202(1) and 415.107(1), F.S. (abuse reports confidential).

Thus, a union representative may not attend that portion of an investigatory interview between the DCF Inspector General and an employee requiring the discussion of information taken from a child abuse investigation that is confidential under s. 39.202, F.S. AGO 99-42. *And see* s. 383.412(1)(a), F.S., providing that information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by, and which information is held by, the State Child Abuse Death Review Committee, or a local committee or panel is confidential and exempt from disclosure requirements.

All records and reports of the child protection team of the Department of Health are confidential and exempt, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, DCF, and necessary professionals in furtherance of the treatment or additional evaluative needs of the child, by court order, or to health plan payors, limited to that information used for insurance reimbursement purposes. Section 39.202(6), F.S. *Cf. Records of the Children's Advocacy Center of Southwest Florida Relating to Michele Fontanez*, No. 06-DR-001850 (Fla. 20th Cir. Ct. June 16, 2006) (newspaper granted access to records of child protection team relating to child in care of DCF who died from injuries sustained from a sexual battery allegedly committed by her stepfather because "[a]ccess to the records will allow the public to fully evaluate the circumstances of [the child's] death").

The following information held by a guardian ad litem (GAL) is confidential and exempt and may not be disclosed except as provided in the exemption: medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a GAL which is identified as confidential information under Ch. 39, F.S. Section 39.0132(4)(a)2., F.S. *And see* s. 744.7081, F.S., providing for confidentiality of records held by the Statewide Public Guardianship Office relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness; s. 744.1076, F.S. (except as provided in the exemption, reports of a court monitor which relate to the medical condition, financial affairs, or mental health of a ward are confidential); and s. 744.708(2), F.S. (no disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law).

#### **b. Release of abuse records**

Section 39.2021(1), F.S., authorizes any person or organization, including DCF, to petition the court to make public DCF records relating to its investigation into alleged abuse, neglect, exploitation or abandonment of a child. The court shall determine if good cause exists for public access to the records and is required to balance the best interest of the child and the interests of the child's siblings, together with the privacy rights of other persons identified in the reports against the public interest. *Id.*

This "balancing process" thus "requires the trial court to weigh the harm to the child against the benefit to the public that would potentially result from the disclosure of the

records at issue." *In re Records of the Department of Children and Family Services*, 873 So. 2d 506, 513 (Fla. 2d DCA 2004). To perform this function, the trial court must conduct an *in camera* review because "[i]t is impossible to judge the potential impact of the disclosure of information contained in records without knowing what that information is." *Id.* at 514. *But see Department of Health and Rehabilitative Services v. Gainesville Sun Publishing Company*, 582 So. 2d 725 (Fla. 1st DCA 1991), holding that the trial court was not required to hold a hearing before finding good cause to release the department's records relating to a child abuse investigation, where shortly after the department's investigation, the individual who had been investigated killed the victim, the victim's family, and himself.

In cases involving serious bodily injury to a child, DCF may petition the court for immediate public release of records pertaining to the protective investigation. Section 39.202(2), F.S. The court has 24 hours to determine if good cause exists for public release of the records. If no action is taken by the court in that time, DCF may, subject to specified exceptions, release summary information including a confirmation that an investigation has been conducted concerning the victim, the dates and a brief description of procedural activities undertaken in the investigation, and information concerning judicial proceedings. *Id.*

Similar procedures are established in Ch. 415, F.S., for access to DCF records relating to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. See s. 415.1071, F.S.

The petitioner seeking public access to the records must formally serve DCF with the petition. *Florida Department of Children and Families v. Sun-Sentinel*, 865 So. 2d 1278 (Fla. 2004). A "very narrow" exception to the home venue privilege applies when a petition is filed seeking to make DCF records public. See *Sun-Sentinel*, *supra* at 1289, adopting the exception in cases "where a party petitions the court for an order to gain access to public records, and where the records sought are by law confidential and cannot be made public without a determination by the court, pursuant to the petition, that good cause exists for public access."

Section 39.202(2)(o), F.S., provides that access to child abuse records shall be granted to any person in the event of the child's death due to abuse, abandonment, or neglect. However, any information identifying the person reporting abuse, abandonment, or neglect, or any information that is otherwise made confidential or exempt by law shall not be released. *Id.* Section 415.107(3)(l), F.S., provides for similar release of records in the event of the death of a vulnerable adult. *And see* s. 39.202(4), F.S., authorizing DCF and the investigating law enforcement agency to release certain identifying information to the public in order to help locate or protect a missing child under investigation or supervision of the department or its contracted service providers.

### **c. Licensure and quality assurance records**

Records relating to licensure of foster homes, or assessing how the Department of Children and Family Services is carrying out its duties, including references to incidents of abuse, abandonment, or neglect, contained in such records, do not fall within the

parameters of s. 39.202, F.S. AGO 01-54. Such reports are in the nature of quality assurance reports that do not substitute for the protective investigation of child abuse, abandonment, or neglect; to the extent that such incident reports reference an occurrence of abuse, abandonment, or neglect, identifying information that reveals the identity of the victim contained in the references should be redacted. *Id.* Cf. s. 409.175(16), F.S., providing an exemption for certain personal information about licensed foster parents, foster parent applicants, and their families. *And see Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 637 (Fla. 5th DCA 1983), *approved*, 467 So. 2d 282 (Fla. 1985) (summary report compiled during a licensing investigation of a residential facility for developmentally disabled persons, subject to disclosure pursuant to statute [now found at s. 393.067(9), F.S.] providing for public access to inspection reports of such facilities).

## 2. Domestic violence

Information about clients received by the Department of Children and Family Services or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection or otherwise, is confidential and exempt from disclosure except as provided by statute. Section 39.908, F.S. Information about the location of domestic violence centers and facilities is also confidential. *Id.*

A petitioner seeking an injunction for protection against domestic violence may furnish the petitioner's address to the court in a separate confidential filing for safety reasons. Section 741.30(3)(b), F.S. See also s. 119.071(2)(j)1., F.S. (domestic violence victim may file written request, accompanied by official verification that a crime has occurred, to have his or her home or employment address, home or employment telephone number, or personal assets exempt from disclosure); and s. 787.03(6)(c), F.S. (current address and telephone number of the person taking the minor or incompetent person when fleeing from domestic violence and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03[6][b], F.S., are confidential and exempt from disclosure).

Personal identifying information contained in records documenting an act of domestic violence that is submitted to an agency by an agency employee seeking to take leave under the requirements of s. 741.313, F.S., is confidential and exempt. Section 741.313(7), F.S. A written request for leave submitted by an agency employee and any agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken. *Id.*

The addresses, telephone numbers, and social security numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence (program) are exempt from disclosure, except as provided in the exemption. Section 741.465(1), F.S. A similar exemption is provided for the names, addresses, and telephone numbers of program participants contained in voter registration and voting records. Section 741.465(2), F.S. Cf. s. 97.0585, F.S., providing that the names, addresses, and telephone numbers of stalking or aggravated stalking victims are exempt from disclosure in the same manner as are participants in the Address Confidentiality



Program for Victims of Domestic Violence which are held by the Attorney General, provided that the victim files a sworn statement of stalking with the Attorney General's Office and otherwise complies with the procedures in ss. 741.401-741.409, F.S.

Any information in a record created by a domestic violence fatality review team that reveals the identity of a domestic violence victim or the identity of the victim's children is confidential and exempt from disclosure. Section 741.3165, F.S.

For information regarding the status of abuse records compiled by law enforcement agencies in the course of a criminal investigation, please refer to the discussion in s. G.18.e., *supra*, relating to victim information contained in crime reports.

## **L. TO WHAT EXTENT DOES FEDERAL LAW PREEMPT STATE LAW REGARDING PUBLIC INSPECTION OF RECORDS?**

### **1. Under what circumstances will a federal statute operate to make agency records confidential?**

The general rule is that records which would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records. If a federal statute requires particular records to be closed and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Art. VI, U.S. Const., the state must keep the records confidential. *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935); AGOs 90-102, 85-03, 81-101, 80-31, 74-372, and 73-278. *See also Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997) (exemptions from disclosure set forth in federal Freedom of Information Act apply to federal agencies but not to state agencies). *Compare Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal law prohibits public disclosure of social security numbers in state teacher certification database).

Thus, tenant records of a public housing authority are not exempt, by reason of the Federal Privacy Act, from disclosure otherwise required by the Florida Public Records Act. *Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117 (Fla. 5th DCA 1994). Rejecting the housing authority's argument that it was an agency of the federal government and thus subject to the Federal Privacy Act, the court concluded that while the authority received federal funds and was subject to some oversight, the federal government was not involved in the day-to-day operations of the authority and the records produced and submitted to the federal government were simply "monitoring devices." *See now* s. 119.071(5)(f), F.S., providing confidentiality for medical history records and certain insurance information provided by applicants for or participants in government housing assistance programs. *Cf. Florida Department of Children and Family Services v. Florida Statewide Advocacy Council*, 884 So. 2d 1162, 1164 (Fla. 2d DCA 2004) (rejecting state agency's contention that federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 [HIPAA] prohibited a trial judge from issuing an "access warrant" requiring the agency to provide client records to the advocacy council; the appellate court found that the federal regulations expressly authorized such disclosures if made to another agency pursuant

to court order).

Similarly, since federal law did not clearly require that documents received by a state agency in the course of settlement negotiations to resolve a federal lawsuit be kept confidential, such documents were found to be open to inspection under Ch. 119, F.S. *Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-2108 (Fla. 2d Cir. Ct. September 20, 1991), *per curiam affirmed*, 606 So. 2d 1267 (Fla. 1st DCA 1992). *Accord Lakeland Ledger Publishing Corporation v. School Board of Polk County*, No. GC-G-91-3803 (Fla. 10th Cir. Ct. November 21, 1991) (map prepared by U.S. Justice Department concerning desegregation of Lakeland schools and given to school district employees was a public record and open to inspection). *Cf. State v. Buenoano*, 707 So. 2d 714 (Fla. 1998) (materials furnished to state attorney by federal government were not subject to public inspection even though erroneously furnished to defendant in criminal case because Florida law provides an exemption from disclosure for criminal investigative information received from a non-Florida criminal justice agency on a confidential or restricted basis); *Morris v. Whitehead*, 588 So. 2d 1023, 1024 (Fla. 2d DCA 1991) (upholding nondisclosure of confidential records received by housing authority from the federal government pursuant to agreement authorized by state housing law); and *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683 (S.D. Fla. 1990) (while the actions of the State of Florida in releasing documents are subject to the mandates of Ch. 119, F.S., the actions of the federal government in a criminal prosecution undertaken by the Office of the United States Attorney are not).

## **2. To what extent is copyrighted material in possession of an agency subject to public inspection and copying?**

### **a. Copyrights held by agencies**

In the absence of statutory authorization, a public official is not empowered to obtain a copyright for material produced by his or her office in connection with the transaction of official business. *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005) (property appraiser not authorized to assert copyright protection for the Geographic Information System maps created by his office). *Accord* AGOs 03-42, 88-23, and 86-94. *Cf.* AGO 00-13 (in the absence of express statutory authority, state agency not authorized to secure a trademark).

Section 19.084(2), F.S., however, specifically authorizes agencies to hold a copyright for data processing software created by the agency. The agency may sell the copyrighted software to public or private entities or may establish a license fee for its use. *See also* s. 24.105(10), F.S., authorizing the Department of the Lottery to hold patents, copyrights, trademarks and service marks; *and see* ss. 286.021 and 286.031, F.S., prescribing duties of the Department of State with respect to authorized copyrights obtained by state agencies.

### **b. Copyrighted material obtained by agencies**

The federal copyright law vests in the owner of a copyright, subject to certain

limitations, the exclusive right to do or to authorize, among other things, the reproduction of the copyrighted work and the distribution of the copyrighted work to the public by sale or other transfer of ownership. See AGO 97-84, citing to pertinent federal law and interpretive cases. However, the Attorney General's Office has concluded that the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record. For example, AGO 90-102 advised that copyrighted data processing software which was not specifically designed or created for the county but was being used by the county in its official capacity for official county business fell within the definition of "public record."

Moreover, in *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382-1383 (Fla. 1st DCA 1994), the court rejected a state agency's argument that a transcript of a hearing that had been copyrighted by the court reporter and filed with the agency should not be copied without the copyright holder's permission. The court stated that the agency was under a statutory obligation to preserve all testimony in the proceeding and make a transcript available in accordance with the fees set forth in Ch. 119, F.S. *And see* AGO 75-304 (agency may not enter into agreement with court reporter to refer all requests for copies of agency proceedings to court reporter who originally transcribed proceedings; agency must provide copies of transcripts in accordance with charges set forth in Public Records Act). *Cf.* AGO 95-37 (fee prescribed in s. 119.07, F.S., applies to the duplication of copyrighted materials contained in a county law library when such reproduction is permissible under the federal copyright law).

The federal copyright law, when read together with Ch. 119, F.S., authorizes and requires the custodian of records of the Department of State to make maintenance manuals supplied to that agency pursuant to law, available for examination and inspection purposes. AGO 03-26. "With regard to reproducing, copying, and distributing copies of these maintenance manuals which are protected under the federal copyright law, state law must yield to the federal law on the subject." *Id.* The custodian should advise individuals seeking to copy such records of the limitations of the federal copyright law and the consequences of violating its provisions; such notice may take the form of a posted notice that the making of a copy may be subject to the copyright law. AGOs 03-26 and 97-84. However, it is advisable for the custodian to refrain from copying such records himself or herself. AGO 03-26. *But see State v. Allen*, 14 F.L.W. Supp. 172a (Fla. 7th Cir. Ct. November 2, 2006) (defendant entitled to inspect and copy copyrighted operating manual for the radar unit and speedometer used by the police under Art. I, s. 24, Fla. Const.; if police department declined to make copies, defendant or his representative must be allowed reasonable access to the documents and a copy machine to make copies).

Moreover, as noted by the court in *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, *supra*, once a transcript of an administrative hearing conducted by or on behalf of an agency has been filed with the agency, the transcript becomes a public record, without regard to who ordered the transcription or bore its expense. The agency which is under a statutory obligation to preserve all testimony (see *now* s. 120.57[1][g], F.S.) can charge neither the parties nor the public more than

the charges authorized by Ch. 119, F.S., regardless of the fact that the court reporter may have copyrighted the transcript.

## **M. WHAT FEES MAY LAWFULLY BE IMPOSED FOR INSPECTING AND COPYING PUBLIC RECORDS?**

### **1. When may an agency charge a fee for the mere inspection of public records?**

Providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation. AGO 85-03. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law. See *State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905). Nor may an agency impose a fee upon persons who wish to listen to tape recordings of city commission meetings. AGO 75-50 (agency may not precondition the inspection of a public document on the payment of a fee; the fact that the records ought to be inspected is a tape recording as opposed to a written document is of no import insofar as the imposition of a fee for inspection is concerned). And see AGOs 84-03 and 76-34 (only those fees or charges which are authorized by statute may be imposed upon an individual seeking access to public records).

Section 119.07(4)(d), F.S., however, authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require *extensive* use of information technology resources, or *extensive* clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency. See *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008) (special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required). Thus, an agency may adopt a policy imposing a reasonable special service charge based on the actual labor cost for clerical personnel who are required, due to the nature or volume of a public records request, to safeguard such records from loss or destruction during their inspection. AGO 00-11. In doing so, however, the county's policy should reflect no more than the actual cost of the personnel's time and be sensitive to accommodating the request in such a way as to ensure unfettered access while safeguarding the records. *Id.*

### **2. Is an agency required to provide copies of public records if asked, or may the agency allow inspection only?**

"It is the policy of this state that all state, county, and municipal records are open for personal inspection *and copying* by any person." (e.s.) Section 119.01(1), F.S. In addition, s. 119.07(1)(a), F.S., provides that "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so . . . ." Finally, s. 119.07(4), F.S., requires the custodian to "furnish a copy or a certified copy of the record upon payment of the fee prescribed by law . . . ." And see *Fuller v. State ex rel. O'Donnell*, 17 So. 2d 607 (Fla. 1944) ("The best-reasoned authority in this country holds that the right to inspect public records carries with it the right to make copies."); *Winter v. Playa del Sol, Inc.*, 353 So. 2d 598, 599 (Fla. 4th DCA 1977) (right to inspect public records would in many cases be valueless without the right

to make copies); *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So. 2d 1230, 1232n.2 (Fla. 4th DCA 1977) (Public Records Act requires custodian to furnish copies). *Cf. Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (if the requestor identifies a record with sufficient specificity to permit the agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

In order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests for information as to copying costs. *Wootton v. Cook*, *supra*. See also *Woodard v. State*, 885 So. 2d 444 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total cost to copy the requested records. *Cf. Mathis v. State*, 722 So. 2d 235 (Fla. 2d DCA 1998) (petitioner seeking writ of mandamus to compel court reporter to inform him of the cost to obtain a transcript of trial court proceedings was entitled to a show cause order as he showed a prima facie basis for relief under Rule 2.420[e] [see now Rule 2.420(h)], Fla. R. Jud. Admin.).

### **3. Does Ch. 119, F.S., exempt certain individuals (such as indigent persons or inmates) from paying statutory fees to obtain copies of public records?**

Chapter 119, F.S., does not contain a provision that prohibits agencies from charging indigent persons or inmates the applicable statutory fee to obtain copies of public records. See *Roesch v. State*, 633 So. 2d 1, 3 (Fla. 1993) (indigent inmate not entitled to receive copies of public records free of charge nor to have original state attorney files mailed to him in prison; prisoners are "in the same position as anyone else seeking public records who cannot pay" the required costs); *Potts v. State*, 869 So. 2d 1223 (Fla. 2d DCA 2004) (no merit to inmate's contention that Ch. 119, F.S., entitles him to free copies of all records generated in his case); *Alexis v. State*, 732 So. 2d 46 (Fla. 3d DCA 1999) (indigent defendant not entitled to public records free of charge); and *Yanke v. State*, 588 So. 2d 4 (Fla. 2d DCA 1991), *review denied*, 595 So. 2d 559 (Fla. 1992), *cert. denied*, 112 S.Ct. 1592 (1992) (prisoner must pay copying and postage charges to have copies of public records mailed to him).

Similarly, a labor union must pay the costs stipulated in Ch. 119, F.S., for copies of documents it has requested from a public employer for collective bargaining purposes because "[a] labor union seeking information from the employer with whom it is locked in collective bargaining negotiations is not exempt from the Florida Public Records Act." *City of Miami Beach v. Public Employees Relations Commission*, 937 So. 2d 226 (Fla. 3d DCA 2006). And see *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382n.7 (Fla. 1st DCA 1994) (indigent person "is not relieved by his indigency" from paying statutory costs to obtain public records).

An agency, however, is not precluded from choosing to provide informational copies of public records without charge. AGO 90-81.

### **4. Are members of an advisory council entitled to copies of public records free of charge?**

A school district is under no statutory obligation to provide copies of public records

free of charge to individual members of a school advisory council, but a school district may formulate a policy for the distribution of such records. AGO 99-46. If it is found that the *advisory council* needs certain school records in order to carry out its statutory functions, such records should be provided to the *council* in the same manner that records related to agenda items are provided to school board members. *Id. Cf. Inf. Op. to Martin*, November 21, 2006 (school board policy requiring that a request for information by an individual board member requiring more than sixty minutes of staff time to prepare must be presented to the school board for approval would be invalid if the school board member is asking under public records law; however, the school board member would be subject to any charges allowed by Chapter 119, F.S.).

## **5. What are the statutory fees to obtain copies of public records?**

If no fee is prescribed elsewhere in the statutes, s. 119.07(4)(a)1., F.S., authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. Section 119.07(4)(a)2., F.S. *And see* s. 119.011(7), F.S., defining the term "duplicated copies" to mean "new copies produced by duplicating, as defined in s. 283.30", F.S. "Duplicating" means "the process of reproducing an image or images from an original to a final substrate through the electrophotographic, xerographic, laser, or offset process or any combination of these processes, by which an operator can make more than one copy without rehandling the original." Section 283.30(3), F.S.

A charge of up to \$1.00 per copy may be assessed for a certified copy of a public record. Section 119.07(4)(c), F.S.

For other copies, the charge is limited to the actual cost of duplication of the record. Section 119.07(4)(a)3., F.S. The phrase "actual cost of duplication" is defined to mean "the cost of the material and supplies used to duplicate the public record, but does not include the labor cost and overhead cost associated with such duplication." Section 119.011(1), F.S. An exception, however, exists for copies of county maps or aerial photographs supplied by county constitutional officers which may include a reasonable charge for the labor and overhead associated with their duplication. Section 119.07(4)(b), F.S. *And see* the discussion on the special service charge in s. M.11., *infra*.

## **6. May an agency charge for travel costs, search fees, development costs and other incidental costs?**

An agency should not consider the furnishing of public records to be a "revenue-generating operation." AGO 85-03. *See also* AGO 89-93 (city not authorized to sell copies of its growth management book for \$35.00 each when the actual cost to reproduce the book is \$15.10 per copy; city is limited to charging only the costs authorized by Ch. 119, F.S.).

The Public Records Act does not authorize the addition of overhead costs such as utilities or other office expenses to the charge for public records. AGO 99-41. Similarly, an agency may not charge for travel time and retrieval costs for public records stored

off-premises. AGO 90-07. Nor may an agency assess fees designed to recoup the original cost of developing or producing the records. AGO 88-23 (state attorney not authorized to impose a charge to recover part of costs incurred in production of a training program; the fee to obtain a copy of the videotape of such program is limited to the actual cost of duplication of the tape). *And see State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382 (Fla. 1st DCA 1994) (once a transcript of an administrative hearing is filed with the agency, the transcript becomes a public record regardless of who ordered the transcript or paid for the transcription; the agency can charge neither the parties nor the public a fee that exceeds the charges authorized in the Public Records Act). *Cf.* s. 119.07(4)(b), F.S., providing that 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.

Therefore, unless a specific request for copies requires extensive clerical or supervisory assistance or extensive use of information technology resources so as to trigger the special service charge authorized by s. 119.07(4)(d), F.S., an agency may charge only the actual cost of duplication for copies of computerized public records. AGO 99-41. The imposition of the service charge, however, is dependent upon the nature or volume of records requested, not on the cost to either develop or maintain the records or the database system. *Id.*

**7. May an agency require that production and copying of public records be accomplished only through a private company that acts as a clearinghouse for the agency's public records?**

No. Although an agency may contract with private companies to provide information also obtainable through the agency, it may not abdicate its duty to produce such records for inspection and copying by requiring those seeking public records to do so only through its designee and then paying whatever fee that company may establish for its services. AGO 02-37. The agency is the custodian of its public records and, upon request, must produce such records for inspection and copy such records at the statutorily prescribed fee. *Id.* *And see* AGO 05-34 (while the property appraiser may provide public records, excluding exempt or confidential information, to a private company, the property appraiser may receive only those fees that are authorized by statute and may not, in the absence of statutory authority, enter into an agreement with the private company where the property appraiser provides such records in exchange for either in-kind services or a share of the profits or proceeds from the sale of the information by the private company).

**8. Should an agency charge sales tax when providing copies of public records?**

No. In AGO 86-83, the Attorney General's Office advised that the sales tax imposed pursuant to s. 212.05, F.S., is not applicable to the fee charged for providing copies of records under s. 119.07, F.S. *See* s. 5(a) of Department of Revenue Rule 12A-1.041, F.A.C., stating that "[t]he fee prescribed by law, or the actual cost of duplication, for providing copies of public records . . . under Chapter 119, F.S., is exempt from sales tax."

**9. Does s. 119.07(4), F.S., prescribe the fee that an agency may charge for furnishing a copy of a record to a person who is authorized to access an otherwise confidential record?**

Unless another fee to obtain a particular record is prescribed by law, an agency may not charge fees that exceed those in Ch. 119, F.S, when providing copies of confidential records to persons who are authorized to obtain them. For example, in AGO 03-57, the Attorney General's Office advised that persons who are authorized by statute to obtain otherwise confidential autopsy photographs should be provided copies in accordance with the provisions of the Public Records Act, *i.e.*, s. 119.07(4), F.S. The medical examiner is not authorized to charge a fee that exceeds those charges. *Id.*

**10. What are the charges if the requestor makes his or her own copies (*i.e.*, provides his or her own copying machine and makes the copies himself or herself)?**

Section 119.07(3)(a), F.S., provides a "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." 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" if the clerk can provide a copy of the microfilm. Section 119.07(3)(b), F.S.

The photographing is to be done in the room where the public records are kept. Section 119.07(3)(d), F.S. However, if in the custodian's judgment, this is impossible or impracticable, the copying shall be done in another room or place, as close as possible to the room where the public records are kept. *Id.* Where provision of another room or place is necessary, the expense of providing the same shall be paid by the person who wants to copy the records. *Id.* The custodian may charge the person making the copies for supervision services. Section 119.07(4)(e)2., F.S. In such cases the custodian may not charge the copy charges authorized in s. 119.07(4)(a), F.S., but may charge only the supervision service charge authorized in s. 119.07(4)(e)2., F.S. See AGO 82-23.

**11. When may an agency charge a special service charge for *extensive* use of clerical or supervisory labor or *extensive* information technology resources?**

Section 119.07(4)(d), F.S. [formerly s. 119.07(1)(b), F.S.], states that if the nature or volume of public records to be inspected *or* copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a reasonable service charge based on the cost actually incurred by the agency for such extensive use of information technology resources or personnel. See AGO 90-07, stating that a municipal police department may not ordinarily charge for travel time and retrieval costs for public records stored off-premises; however, if the nature or volume of the records requested, rather than the location of the records, is such as to require extensive clerical or supervisory assistance or extensive use of information technology resources, a reasonable service charge may



be imposed); and AGO 92-38 (town may not restrict access to and copying of public records based upon the amount requested or the span of time which is covered by the public records; however, if extensive use of information technology resources or clerical or supervisory personnel is needed for retrieval of such records, the town may impose a reasonable service charge, based upon the actual costs incurred for the use of such resources). *Cf. Cone & Graham, Inc. v. State*, No. 97-4047 (Fla. 2d Cir. Ct. October 7, 1997) (an agency's decision to "archive" older e-mail messages on tapes so that they could not be retrieved or printed without a systems programmer was analogous to an agency's decision to store records off-premises in that the agency rather than the requestor must bear the costs for retrieving the records and reviewing them for exemptions). When warranted, the special service charge applies to requests for both inspection and copies of public records. *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

Unless the nature or volume of public records to be inspected or copied requires "extensive" use of information technology resources or "extensive" clerical or supervisory assistance, the special service charge is not authorized. If authorized due to the nature or volume of a request, the reasonable service charges should not be routinely imposed, but should reflect the information technology resources or labor costs actually incurred by the agency. AGO 90-07. *And see* AGOs 86-69 and —84-81 recognizing that the special service charge may not be routinely imposed and is not justified merely because a record contained exempted materials.

**a. What is the meaning of the term "extensive" as used in the statute?**

Section 119.07(4)(d), F.S., does not contain a definition of the term "extensive." In 1991, a divided First District Court of Appeal upheld a hearing officer's order rejecting an inmate challenge to a Department of Corrections rule that defined "extensive" for purposes of the special service charge to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. *Florida Institutional Legal Services, Inc. v. Florida Department of Corrections*, 579 So. 2d 267 (Fla. 1st DCA 1991), *review denied*, 592 So. 2d 680 (Fla. 1991). The court agreed with the hearing officer that the burden was on the challenger to show that the administrative rule was invalid under Ch. 120, F.S., and the record did not indicate that the officer's ruling was "clearly erroneous" in this case. Judge Zehmer dissented, saying that the rule was inconsistent with legislative intent and exceeded the agency's delegated authority. More recently, however, the Second District Court of Appeal in *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008), approved a county's similar formula for calculating its special service charge.

In light of the lack of clear direction in the statute as to the meaning of the term "extensive," it may be prudent for agencies to define "extensive" in a manner that is consistent with the purpose and intent of the Public Records Act and that does not constitute an unreasonable infringement upon the public's statutory and constitutional right of access to public records.

Moreover, the statute mandates that the special service charge be "reasonable."

See *Carden v. Chief of Police*, 696 So. 2d 772, 773 (Fla. 2d DCA 1996), in which the court reviewed a challenge to a service charge that exceeded \$4,000 for staff time involved in responding to a public records request, and said that an "excessive charge could well serve to inhibit the pursuit of rights conferred by the Public Records Act." Accordingly, the court remanded the case and required the agency to "explain in more detail the reason for the magnitude of the assessment." *Id.*

**b. What is meant by the term "information technology resources" as used in the statute?**

"Information technology resources" is defined as data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance and training. Section 119.011(9), F.S. The term does not include a videotape or a machine to view a videotape. AGO 88-23. The fact that the request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather, *extensive* use of such resources is required. AGO 99-41.

**c. What is meant by the term "clerical or supervisory assistance" as used in the statute?**

**(1) May an agency charge for the cost to review records for exempt information?**

An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material. AGO 84-81. However, the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task. See *Florida Institutional Legal Services v. Florida Department of Corrections*, 579 So. 2d at 269. And see *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), noting that "it would not be unreasonable in these types of cases [involving many documents and several different exemptions] to charge a reasonable special fee for the supervisory personnel necessary to properly review the materials for possible application of exemptions."

**(2) How should the labor cost be calculated?**

In *Board of County Commissioners of Highlands County v. Colby*, *supra*, the court approved a county's special service charge pursuant to s. 119.07(4), Fla. Stat., which included both an employee's salary and benefits in calculating the labor cost for the special service charge, recognizing, however, that the charge must be reasonable and based upon the actual labor costs incurred by or attributable to the county. *Cf.* AGO 00-11, stating that it would be difficult to justify the imposition of a fee for extensive clerical or supervisory assistance if the personnel providing such assistance were simultaneously performing regular duties.

The term "supervisory assistance" has not been widely interpreted. See *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), concluding that an appropriate charge for supervisory review is "reasonable" in cases involving a large number of documents that contain some exempt information. In *State v. Gudinas*, No.

CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999), the circuit judge approved a rate of \$35 per hour for an agency attorney's review of exempt material in a voluminous criminal case file. The court noted that "only an attorney or paralegal" could responsibly perform this type of review because of the "complexity of the records reviewed, the various public record exemptions and possible prohibitions, and the necessary discretionary decisions to be made with respect to potential exemptions . . . ." However, the court concluded that the agency could charge only a clerical rate for the time spent making copies, even if due to staff shortages, a more highly paid person did the work. See also *Board of County Commissioners of Highlands County v. Colby*, *supra*, in which the court approved a charge based on the salary of a lower paid employee even though the director actually handled the request.

**d. May an agency require a reasonable deposit or advance payment or must the agency produce the records and then ask for payment?**

Section 119.07(4)(a)1., F.S., states that the custodian of public records shall furnish a copy or a certified copy of the record "upon payment of the fee prescribed by law . . . ." See *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991), stating that if a requestor "identifies a record with sufficient specificity to permit [the agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record." (e.s.).

In *Malone v. City of Satellite Beach*, No 94-10557-CA-D (Fla. Cir. Ct. Brevard Co. December 15, 1995), *per curiam affirmed*, 687 So. 2d 252 (Fla. 5th DCA 1997), the court noted that a city's requirement of an advance deposit was contemplated by the Public Records Act. See s. 119.07(4)(d), F.S. According to the court, the city "was authorized to require the payment of an advance deposit under the facts of this case before proceeding with the effort and cost of preparing the voluminous copies requested by the plaintiff." And see *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), in which the court said that if an agency is asked for a large number of records, the fee should be communicated to the requestor before the work is undertaken. "If the agency gives the requesting party an estimate of the total charge, or the hourly rate to be applied, the party can then determine whether it appears reasonable under the circumstances." *Id. Cf.* AGO 05-28 (custodian authorized to bill the requestor for any shortfall between the deposit and the actual cost of copying the public records when the copies have been made and the requesting party subsequently advises the city that the records are not needed).

An agency may refuse to produce additional records if the fees for a previous request for records have not been paid by the requestor. See *Lozman v. City of Riviera Beach*, 995 So. 2d 1027 (Fla. 4th DCA 2008) (s. 119.07(4), F.S., "does not require the City to do any more than what it did in this case," *i.e.*, require Lozman to pay the bill for the first group of records he requested before the city would make any further documents available).

## **12. Fee issues relating to specific records**

### **a. Clerk of court records**

#### **(1) County records**

Pursuant to s. 125.17, F.S., the clerk of the circuit court serves as the *ex officio* clerk to the board of county commissioners. Records maintained by the clerk which relate to this function (e.g., county resolutions, budgets, minutes, etc.) are public records which are subject to the copying fees set forth in Ch. 119, F.S., and not the service charges set forth in Ch. 28, F.S. AGO 85-80. *Accord* AGO 94-60 (documents such as minutes of public meetings, which are in the custody of the clerk as *ex officio* clerk of the board of county commissioners, are not subject to the \$1.00 per page charge prescribed in Ch. 28). *See also* AGO 82-23 (when members of the public use their own photographic equipment to make their own copies, the clerk is not entitled to the fees prescribed in s. 28.24, F.S., but is entitled only to the supervisory service charge now found in s. 119.07[4][e]2., F.S.).

#### **(2) Judicial records**

When the clerk is exercising his or her duties derived from Article V of the Constitution, the clerk is not subject to legislative control. *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995). Thus, when the clerk is acting in his or her capacity as part of the judicial branch of government, access to the judicial records under the clerk's control is governed exclusively by Fla. R. Jud. Admin. 2.420, Public Access to Judicial Records. *Id.* *See* Fla. R. Jud. Admin. 2.420(b)(2), defining the term "judicial branch" for purposes of the rule, to include "the clerk of court when acting as an arm of the court."

Florida Rule of Judicial Administration 2.240(i)(3) states that "[f]ees for copies of records in all entities in the judicial branch of government, *except for copies of court records*, shall be the same as those provided in section 119.07, Florida Statutes." (e.s.). The fees to obtain copies of court records are set forth in s. 28.24, F.S. This statute establishes fees that are generally higher than those in Ch. 119, F.S. For example, the charge to obtain copies of court records is \$1.00 per page, rather than 15 cents per page as established in s. 119.07(4)(a)1., F.S. *See also* *WFTV, Inc. v. Wilken*, 675 So. 2d 674 (Fla. 4th DCA 1996) (the \$1.00 per page copying charge in s. 28.24, F.S., applies to all court documents, whether unrecorded or recorded).

### **b. Traffic reports**

In the absence of statutory provision, the charges authorized in s. 119.07(4) govern the fees to obtain copies of crash reports. However, there are specific statutes which apply to fees to obtain copies of reports from the Department of Highway Safety and Motor Vehicles. Section 321.23(2)(a), F.S., provides that the fee to obtain a copy of a crash report from the department is \$10.00 per copy. A copy of a homicide report is \$25 per copy. Section 321.23(2)(b), F.S. Separate charges are provided for photographs. Section 321.23(2)(c), F.S.

Pursuant to s. 316.066(2)(a), F.S., one or more counties may enter into an

agreement with the appropriate state agency to be certified by the agency to have a traffic records center for the purpose of tabulating and analyzing countywide traffic crash reports. Fees for copies of public records provided by a certified traffic records center are \$10.00 per copy for a crash report, \$25 per copy for a homicide report, and 50 cents per copy for a uniform traffic citation. Section 316.066(2)(c), F.S.

## **N. WHAT ARE THE OPTIONS IF AN AGENCY REFUSES TO PRODUCE PUBLIC RECORDS FOR INSPECTION AND COPYING?**

### **1. Voluntary mediation program**

Section 16.60, F.S., establishes an informal mediation program within the Office of the Attorney General as an alternative for resolution of open government disputes. For more information about the voluntary mediation program, please contact the Office of the Attorney General at the following address: The Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; telephone (850)245-0140; or you may visit the Office of the Attorney General website: <http://myfloridalegal.com>.

By Executive Order 07-01, the Governor created the Office of Open Government, charged with providing the Office of the Governor and each of the executive agencies under the Governor's purview guidance to assure full and expeditious compliance with Florida's open government and public records laws. See also Executive Order 07-242 directing all gubernatorial agencies to adopt an Open Government Bill of Rights. For more information about the Office of Open Government, please contact the office at the following address: The Office of Open Government, PL-04, The Capitol, Tallahassee, Florida 32399-0001; telephone (850) 921-6099; or you may visit the Office of Open Government website: [http://www.flgov.com/og\\_home](http://www.flgov.com/og_home) Also available on the website is the 2009 report of the Commission on Open Government Reform at: [http://www.flgov.com/pdfs/og\\_2009finalreport.pdf](http://www.flgov.com/pdfs/og_2009finalreport.pdf)

### **2. Civil action**

#### **a. Remedies**

A person denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119, F.S. See *Radford v. Brock*, 914 So. 2d 1066 (Fla. 2d DCA 2005) (trial judge dismissal of a writ of mandamus directed to clerk of court and court reporter who were alleged to be records custodians was erroneous because trial judge did not issue a show cause order to the clerk of court and court reporter, and because there was no sworn evidence refuting the petitioner's allegations).

Before filing a lawsuit, the petitioner must have furnished a public records request to the agency. *Villarreal v. State*, 687 So. 2d 256 (Fla. 1st DCA 1996), *review denied*, 694 So. 2d 741 (Fla. 1997), *cert. denied*, 118 S.Ct. 316 (1997) (improper to order agency to produce records before it has had an opportunity to comply); and *Maraia v. State*, 685 So. 2d 851 (Fla. 2d DCA 1995) (public records action dismissed where petitioner failed to file a request for public records with the records custodian before filing suit). See also *Mills v. State*, 684 So. 2d 801 (Fla. 1996) (no abuse of discretion in trial court's failure to

order sheriff's department to produce certain requested records where there was no demonstration that the records exist); and *Hillier v. City of Plantation*, 935 So. 2d 105 (Fla. 4th DCA 2006) (trial court finding that city had complied with petitioner's public records requests was supported by competent, substantial evidence). *Cf. Coconut Grove Playhouse, Inc. v. Knight-Ridder, Inc.*, 935 So. 2d 597 (Fla. 3d DCA 2006) (trial court order departed from essential requirements of law by requiring defendant in a public records action to produce its records as a sanction for failure to respond to a discovery subpoena).

Where a multi-agency law enforcement task force had been created by a mutual aid agreement and the agreement did not indicate an intent to create a separate legal entity capable of being sued in its own name, a requestor could not sue the task force for production of records; however, as the agreement did not specify which agency would be responsible for responding to public records requests, an action could be brought against any of the member agencies to produce records in the possession of the task force. *Ramese's, Inc. v. Metropolitan Bureau of Investigation*, 954 So. 2d 703 (Fla. 5th DCA 2007).

Section 119.11(1), F.S., mandates that actions brought under Ch. 119 are entitled to an immediate hearing and take priority over other pending cases. *See Salvador v. Fennelly*, 593 So. 2d 1091 (Fla. 4th DCA 1992) (the early hearings provision reflects a legislative recognition of the importance of time in public records cases; such hearings must be given priority over more routine matters, and a good faith effort must be made to accommodate the legislative desire that an immediate hearing be held). Expedited review of denials of access to judicial records or to the records of judicial agencies shall be provided through an action for mandamus, or other appropriate appellate remedy. Rule 2.420(h), Fla. R. Jud. Admin. *Cf. s. 119.07(9), F.S.* (s. 119.07, F.S., may not be used by an inmate as the basis for failing to timely litigate any postconviction action). *And see Woodfaulk v. State*, 935 So. 2d 1225 (Fla. 5th DCA 2006) (s. 119.11, F.S., does not place specific requirements on a party requesting public records to obtain an accelerated hearing except the filing of an action to enforce the public records law).

### **(1) Mandamus**

Generally, mandamus is the appropriate remedy to enforce compliance with the Public Records Act. *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992). *See also Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000); *Smith v. State*, 696 So. 2d 814 (Fla. 2d DCA 1997); *Donner v. Edelstein*, 415 So. 2d 830 (Fla. 3d DCA 1982); *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981). If the requestor's petition presents a prima facie claim for relief, an order to show cause should be issued so that the claim may receive further consideration on the merits. *Staton v. McMillan, supra. Accord Gay v. State*, 697 So. 2d 179 (Fla. 1st DCA 1997). *Cf. Minasian v. State*, 967 So. 2d 454 (Fla. 4th DCA 2007) (petition for writ of mandamus is the proper vehicle to seek review of the denial of access to judicial records).

However, it has been held that mandamus is not appropriate when the language of an exemption statute requires an exercise of discretion. In *Florida Society of Newspaper*

*Editors, Inc. v. Public Service Commission*, 543 So. 2d 1262 (Fla. 1st DCA 1989), the court found that discretion would be required to determine whether certain records of the Public Service Commission constituted "proprietary confidential business information;" thus, mandamus would not lie to compel disclosure of the records. *Accord Shea v. Cochran*, 680 So. 2d 628 (Fla. 4th DCA 1996) (mandamus was an inappropriate remedy where sheriff provided a specific reason for refusing to comply with a public records request by claiming the records were part of an active criminal investigation). *And see Skeen v. D'Alessandro*, 681 So. 2d 712 (Fla. 2d DCA 1995) (mandamus not a proper remedy if there is no evidence, presented or proffered, that the requested document existed at the time of the mandamus hearing); *Hall v. Liebling*, 890 So. 2d 475 (Fla. 2d DCA 2004) (mandamus cannot be used to compel a former assistant public defender who is now in private practice to release documents to his former client because the attorney is now a private citizen, not a government official); and *Lozman v. City of Riviera Beach*, 995 So. 2d 1027 (Fla. 4th DCA 2008) (because s. 119.07[4], F.S., did not require city to provide additional records when bill for first group of records requested had not been paid, requestor not entitled to writ of mandamus).

Mandamus is a "one time order by the court to force public officials to perform their legally designated employment duties." *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996), *review denied*, 684 So. 2d 1353 (Fla. 1996). Thus, a trial court erred when it retained continuing jurisdiction to oversee enforcement of a writ of mandamus granted in a public records case. *Id. Cf. Areizaga v. Board of County Commissioners of Hillsborough County*, 935 So. 2d 640 (Fla. 2d DCA 2006), *review denied*, 958 So. 2d 918 (Fla. 2007) (circuit courts may not refer extraordinary writs to mediation; thus, trial judge should not have ordered mediation of petition for writ of mandamus seeking production of public records).

## **(2) Injunction**

Injunctive relief may be available upon an appropriate showing for a violation of Ch. 119, F.S. See *Daniels v. Bryson*, 548 So. 2d 679 (Fla. 3d DCA 1989) (injunctive relief appropriate where there is a demonstrated pattern of noncompliance with the Public Records Act, together with a showing of likelihood of future violations; mandamus would not be an adequate remedy since mandamus would not prevent future harm).

## **(3) Declaratory relief sought by agencies**

Occasionally the question arises as to whether an *agency*, faced with a demand for public records, may seek guidance from the court in the form of a complaint for declaratory judgment instead of complying with the request for public records or asserting an exemption. It has been held that such requests for general declaratory relief are not appropriate. See *Sarasota Herald-Tribune Company, Inc. v. Schaub*, No. CA87-2949 (Fla. 12th Cir. Ct. July 20, 1988), *per curiam affirmed*, 539 So. 2d 478 (Fla. 2d DCA 1989) (state attorney cannot litigate a declaratory judgment action to obtain judicial advice on how to perform his public duties under the Public Records Act); *Wille v. McDaniel*, 18 Med. L. Rptr. 2144, No. CL-91-154-AE (Fla. 15th Cir. Ct. February 18, 1991) (sheriff's stated purpose in litigating declaratory judgment action [to avoid being assessed attorney's fees under the Public Records Act] is insufficient to support a

declaratory action). See also *Askew v. City of Ocala*, 348 So. 2d 308 (Fla. 1977) (trial court properly dismissed complaint for declaratory relief for failure to state a cause of action where public officials disagreed with Attorney General's advisory opinion and sought different judicial opinion).

In *WFTV, Inc. v. Robbins*, 625 So.2d 941 (Fla. 4th DCA 1993), the court held that a supervisor of elections who denied a public records request to inspect certain election results on the grounds that a court order entered in another case involving the election prohibited disclosure, "unlawfully refused" access to public records. The court determined that the supervisor herself had sought the confidentiality order by means of a motion seeking "directions" from the court in the election lawsuit. The supervisor was thus liable for payment of attorney's fees incurred by the requestor in the subsequent public records action pursuant to s. 119.12, F.S., providing for an assessment of attorney's fees and costs if an agency unlawfully refuses to permit examination and inspection of documents under the Public Records Act. See also *City of St. Petersburg v. St. Petersburg Junior College*, No. 93-0004210-CI-13, *Order Awarding Attorney's Fees* (Fla. 6th Cir. Ct. March 25, 1994), in which a city that had initially filed an action for declaratory relief as to whether records requested under Ch. 119 were confidential under federal law was ultimately determined to be liable for attorney's fees under s. 119.12, F.S., after the party seeking the records filed a counterclaim and the judge determined that the records were not exempt.

## **b. Procedural issues**

### **(1) Discovery**

In the absence of an evident abuse of power, the trial court's exercise of discretion in matters associated with pretrial discovery in a public records action will not be disturbed. *Lorei v. Smith*, 464 So. 2d 1330, 1333 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985). In *Lorei*, the appellate court upheld the trial judge's denial of a request to permit discovery pertaining to the agency's procedures for maintaining public records. *Id.* The court noted that the interrogatories related to "the mechanics associated with the department's record maintenance, the internal policies or actions which lead to the development of files," and other matters which were not relevant to the question of whether the requested records were exempt from disclosure. *Id.*

The court cautioned, however, that "discovery in a context such as the one at hand may well be appropriate in the circumstance where a good faith belief exists that the public agency may be playing 'fast and loose' with the requesting party or the court, once its statutorily delegated authority is activated." *Id.* Cf. *Lopez v. State*, 696 So. 2d 725, 727 (Fla. 1997) (trial court's denial of motion to depose custodian affirmed because there were "no allegations that any documents had been removed"); and *Johnson v. State*, 769 So. 2d 990, 995 (Fla. 2000) (discovery not warranted based on "bare allegations" that additional records "should" exist).

### **(2) Hearing**

An order dismissing a public records complaint filed against a sheriff was overturned by the Fourth District because the judge failed to hold a hearing before entering the



order. " Although the sheriff may ultimately not be able to retrieve these records, because of their age or another reason, the order in this case, entered without an evidentiary hearing, was premature." *Grace v. Jenne*, 855 So. 2d 262, 263 (Fla. 4th DCA 2003).

### **(3) *In camera* inspection**

Section 19.07(1)(g), F.S., provides that in any case in which an exemption is alleged to exist pursuant to s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), F.S., the public record or part of the record in question shall be submitted to the trial court for an *in camera* examination. See *City of St. Petersburg v. Romine ex. rel. Dillinger*, 719 So. 2d 19 (Fla. 2d DCA 1998) (*in camera* review mandated when confidential informant exception now found at s. 119.071[2][f], F.S., is asserted). See also *Walton v. Dugger*, 634 So. 2d 1059 (Fla. 1993); *Lopez v. Singletary*, 634 So. 2d 1054 (Fla. 1993) (records claimed by state attorney to constitute exempted work product must be produced for an *in camera* inspection; only the judge can determine whether particular documents are public records which must be disclosed to death penalty defendant in postconviction proceedings. *But see Jordan v. School Board of Broward County*, 531 So. 2d 976 (Fla. 4th DCA 1988), in which a trial court's failure to conduct an *in camera* inspection of a file containing alleged exempt attorney work product was deemed to be an invalid basis for a new trial when neither party requested an *in camera* inspection, and the agency's attorney made no objection at trial.

If an exemption is alleged under s. 119.071(2)(c), F.S. (the exemption for active criminal investigative or intelligence information), an inspection is discretionary with the court. Section 119.07(1)(g), F.S. However, in *Tribune Company v. Public Records*, 493 So. 2d 480, 484 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987), the court stated that notwithstanding the trial court's discretion to provide an *in camera* examination if the active criminal investigative information exemption is asserted, it is always the better practice to conduct such an inspection in cases where an exception to the Public Records Act is in dispute. According to the court, inspection lends credence to the decision of the trial court, helps dispel public suspicion, and provides a much better basis for appellate review.

Similarly, in *Woolling v. Lamar*, 764 So. 2d 765, 768-769 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001), the Fifth District concluded that because the state attorney presented "no evidence to meet its burden that the records are exempt" under s. 119.071(2)(c), F.S., an "*in camera* inspection by the lower court is therefore required so that the trial judge will have a factual basis to decide if the records are exempt under [that statute]." *And see Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000) ("[w]e fail to see how the trial court can [determine whether an agency is entitled to a claimed exemption] without examining the records"); and *Garrison v. Bailey*, 4 So. 3d 683 (Fla. 1st DCA 2009) (in-camera inspection of records asserted by agency to be exempt is generally the only way for a trial court to determine whether or not a claim of exemption applies).

#### **(4) Mootness**

In *Puls v. City of Port St. Lucie*, 678 So. 2d 514 ( Fla. 4th DCA 1996), the court, noting that "[p]roduction of the records after the [public records] lawsuit was filed did not moot the issues raised in the complaint," remanded the case for an evidentiary hearing on whether there was an unlawful refusal of access to public records. See also *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 491 (Fla. 2d DCA 1990) (while courts do not ordinarily resolve disputes unless a case or controversy exists, "since the instant situation is capable of repetition while evading review, we find it appropriate to address the issues before us concerning applicability of the Public Records Act for future reference"); *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002) ("the fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner's] entitlement to fees under the statute"); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-798 ( Fla. April 20, 2010) (because damage occurred when city refused to produce canvassing board minutes until approved by city commission, production after the fact did nothing to mollify appellants' injury and therefore issue was not moot as city's refusal "denied any realistic access for the only purpose appellants sought to achieve--review of the Minutes before the Commission meeting."). Compare *Jacksonville Television, Inc. v. Shorstein*, 608 So. 2d 592 ( Fla. 1st DCA 1992) ( where public records lawsuit was determined to be moot because records were delivered to television station prior to entry of writ of mandamus, appellate court would not issue an " advisory opinion" as to whether trial court's voluntary conclusion that agency acted properly by initially withholding the records was correct).

Similarly, in *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 ( Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005), the court found that a public records lawsuit over a custodian's requirement that a commercial company obtain a licensing agreement before using the records did not become moot when the custodian provided the company with the requested data after the lawsuit was filed. Because the data was delivered subject to a condition that it was for personal use only, a controversy remained concerning the validity of the custodian restriction on the use of the data. And see *Southern Coatings, Inc. v. City of Tamarac*, 916 So. 2d 19 (Fla. 4th DCA 2005) (federal court's dismissal of pending claims based on state public records law is not a judgment on the merits and , therefore, not res judicata in a subsequent lawsuit in state court).

#### **(5) Stay**

If the person seeking public records prevails in the trial court, the public agency must comply with the court's judgment within 48 hours unless otherwise provided by the trial court or such determination is stayed within that period by the appellate court. Section 119.11(2), F.S. An automatic stay shall exist for 48 hours after the filing of a notice of appeal for public records and public meeting cases, which stay may be extended by the lower tribunal or the court on motion. Fla. R. App. P. 9.310(b)(2).

### c. Attorney's fees

Section 119.12, F.S., provides that if a civil action is filed against an agency to enforce the provisions of this chapter and the court determines that the 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 attorney's fees. A successful pro se litigant is entitled to reasonable costs under this section. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000); *Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992). *And see Weeks v. Golden*, 846 So. 2d 1247 (Fla. 1st DCA 2003) (prevailing pro se inmate entitled to recover costs associated with postage, envelopes and copying, as well as filing and service of process fees, incurred in public records lawsuit). *Cf. Department of Health and Rehabilitative Services v. Martin*, 574 So. 2d 1223 (Fla. 3d DCA 1991) (error to award attorney's fees where order requiring production of records was entered pursuant to Adult Protective Services Act, rather than the Public Records Act); and *Downs v. Austin*, 559 So. 2d 246 (Fla. 1st DCA 1990), *review denied*, 574 So. 2d 140 (Fla. 1990) (s. 119.12, F.S., does not constitute authority for the award of attorney's fees for efforts expended to obtain the fee provided by that statute).

Section 119.12, F.S., is designed to encourage voluntarily compliance with the requirements of Ch. 119, F.S. See *Office of the State Attorney v. Gonzalez*, 953 So. 2d 759, 764 (Fla. 2d DCA 2007); and *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993) ("If public agencies are required to pay attorney's fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents.").

"[A]ttorney's fees are awardable for unlawful refusal to provide public records under two circumstances: first, when a court determines that the reason proffered as a basis to deny a public records request is improper, and second, when the agency unjustifiably fails to respond to a public records request by delaying until after the enforcement action has been commenced." *Office of the State Attorney v. Gonzalez, supra* at 764. Thus, attorney's fees are recoverable even where access is denied on a good faith but mistaken belief that the documents are exempt from disclosure. *WFTV, Inc. v. Robbins*, 625 So. 2d 941 (Fla. 4th DCA 1993); *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990); *News and Sun-Sentinel Company v. Palm Beach County*, 517 So. 2d 743 (Fla. 4th DCA 1987).

Similarly, the court in *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996), rejected a town's defense that the delay in production of records was caused by either the intentional wrongdoing or ineptitude of its clerk as a valid basis for denying recovery of attorney's fees and costs under s. 119.12, F.S. *And see Office of the State Attorney for the Thirteenth Judicial Circuit of Florida v. Gonzalez, supra* (attorneys fees authorized even if failure to turn over the records was due to a mistake or ineptitude). *But see Alston v. City of Riviera Beach*, 882 So. 2d 436 (Fla. 4th DCA 2004) (denial of attorney's fee claim affirmed because "[t]he record supports the trial court's conclusion that the city had a good faith and reasonable belief that Alston's request applied only to documents under the control of the parks and recreation department and that Alston

failed to establish that the city unlawfully withheld police department records"). Cf. *Grapski v. Machen*, Case No. 01-2005-CA-4005 J ( Fla. 8th Cir. Ct. May 9, 2006) , affirmed per curiam, 949 So. 2d 202 (Fla. 1st DCA 2007) (inadvertent failure to produce some records by an agency seeking to comply with a public records request does not necessarily subject the agency to attorney's fees; a finding of an "unlawful" refusal or delay in producing public records requires some proof that the agency or public official took some action in hindering the production or took no action resulting in the unlawful delay in producing the records). And see *Greater Orlando Aviation Authority v. Nejame*, 4 So. 3d 41 (Fla. 5th DCA 2009), in which the court denied a request for attorney's fees as the aviation authority "did not act unreasonably or in bad faith in refusing production." In reaching this conclusion, the court relied on a case involving the assessment of attorney fees against a private entity acting on behalf of a public agency and a decision issued prior to the statute's amendment in 1984 when the statute authorized the imposition of attorney fees when records were unreasonably withheld. The statute was amended in 1984 to provide for the assessment of a attorney's fees when an agency unlawfully refuses to release a public record.

In addition, an "unjustified failure to respond to a public records request until after an action has been commenced to compel compliance amounts to an unlawful refusal" for purposes of s. 119.12, F.S. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). "[T]he fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner's] entitlement to fees under the statute." *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002). *Accord Barfield v. Town of Eatonville*, 675 So. 2d at 224 (appellant entitled to attorney's fees because "[t]he evidence clearly establishes that it was only after the appellant filed a lawsuit that the documents he had previously sought by written request to the Town were finally turned over to him"). And see *Wisner v. City of Tampa Police Department*, supra; *Brunson v. Dade County School Board*, 525 So. 2d 933 (Fla. 3d DCA 1988); and *Office of the State Attorney v. Gonzalez*, supra.

A different rule has been applied when it is unclear whether a private corporation is an "agency" for purposes of the Public Records Act. In such cases, the private entity's "swift" action to seek declaratory relief to obtain judicial clarification of its status under the law, rather than immediately comply with a request for public documents, has not been considered an "unlawful refusal" to release documents for purposes of the assessment of attorney's fees even though the corporation is ultimately determined to be an "agency" for purposes of Ch. 119, F.S., disclosure requirements. See *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993). *Accord Fox v. News-Press Publishing Company, Inc.*, 545 So. 2d 941 (Fla. 2d DCA 1989).

In *Harold v. Orange County*, 668 So. 2d 1010, 1012 (Fla. 5th DCA 1996), the 5th District Court of Appeal expanded the *PHH* holding by determining that attorney's fees would not be assessed against a private company, even though the prevailing party had sued to obtain the records after being refused access:

Although the *P.H.H.* court commented on the fact that in that case the private

entity had acted swiftly to clarify its status by filing a declaratory judgment action, we do not find that the failure to independently seek such clarification in this case (considering the swiftness of appellant's action), renders an otherwise good faith—even if incorrect—refusal to disclose records an unlawful act.

However, where the entity did not have a "reasonable" or "good faith" belief in the soundness of its position in refusing production, a trial court abused its discretion in failing to award fees and costs. *Knight Ridder, Inc. v. Dade Aviation Consultants*, 808 So. 2d 1268, 1269 (Fla. 3d DCA 2002). Thus, an opinion of independent counsel upon which an entity relied to support its claim that records should not be released to the requestor did not meet the good faith standard because the entity did not provide "full and complete disclosure" of the operative facts to counsel. *Id.* at 1270.

As to calculation of the "reasonable costs of enforcement including reasonable attorneys' fees" to which the prevailing party is entitled, the trial judge is in a better position than the appellate court to make "a factual determination regarding the objectives sought by the [prevailing party], the extent of statutory enforcement obtained, and the time expended in achieving those results." *Daniels v. Bryson*, 548 So. 2d 679, 682 (Fla. 3d DCA 1989). However, where the contract between the client and attorney provided that the attorney would be compensated on a flat hourly basis regardless of the outcome at trial, the trial court erred in awarding an enhanced fee based upon a contingency risk multiplier. *Id.*

Attorney's fees may also be awarded for a successful appeal of a denial of access, provided that at the time of appeal a motion is filed in accordance with the appellate rules. *Downs v. Austin, supra*. And see *Office of the State Attorney v. Gonzalez, supra* (where motion seeking appellate attorney's fees is granted by appellate court and remanded only for calculation of such fees, lower court required to follow court's mandate without further consideration).

### **3. Criminal and noncriminal infraction penalties**

Section 119.10(1)(b), F.S., states that a public officer who *knowingly* violates the provisions of s. 119.07(1), F.S., is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both. See *State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) (s. 119.10[2] authorizes a conviction for violating s. 119.07 only if a defendant is found to have committed such violation "knowingly"; statute cannot be interpreted as allowing a conviction based on mere negligence).

Section 119.10(1)(a), F.S., provides that a violation of any provision of Ch. 119, F.S., by a public officer is a noncriminal infraction, punishable by fine not exceeding \$500. Cf. s. 838.022(1)(b), F.S. (unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act).

A state attorney may prosecute suits charging public officials with violations of the

Public Records Act, including those violations which may result in a finding of guilt for a noncriminal infraction. AGO 91-38.

## **O. WHAT ARE THE REQUIREMENTS FOR THE MAINTENANCE AND DISPOSAL OF PUBLIC RECORDS?**

### **1. Maintenance of records**

All public records should be kept in the buildings in which they are ordinarily used. Section 19.021(1)(a), F.S. Moreover, 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. Section 19.021(1)(b), F.S. Records that are in need of repair, restoration, or rebinding may be authorized by the head of the governmental entity to 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. Section 19.021(1)(c), F.S.

Thus, as a general rule public records may not be routinely removed from the building or office in which such records are ordinarily kept except for official purposes. AGO 93-16. The retention of such records in the home of a public official would appear to circumvent the public access requirements of the Public Records Act and compromise the rights of the public to inspect and copy such records. *Id.* And see AGO 04-43 (mail addressed to city officials at City Hall and received at City Hall should not be forwarded unopened to the private residences of the officials, but rather the original or a copy of the mail that constitutes a public record should be maintained at city offices). *Cf.* Inf. Op. to Sola, March 9, 2010 (municipal election records are municipal records which should be maintained by city even though election conducted by county supervisor of elections).

### **2. Delivery of records to successor**

Section 19.021(4)(a), F.S., provides that whoever has custody of public records shall deliver such records to his or her successor at the expiration of his or her term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. See *Maxwell v. Pine Gas Corporation*, 195 So. 2d 602 (Fla. 4th DCA 1967) (state, county, and municipal records are not the personal property of a public officer); AGO 98-59 (records in the files of the former city attorney which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor); and AGO 75-282 (public records regardless of usefulness or relevancy must be turned over to the custodian's successor in office or to the Department of State). And see s. 19.021(4)(b), F.S., providing that "[w]hoever 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."

In the absence of contrary direction in the legislation dissolving a special taxing district, the district's records should be delivered to the Department of State. AGO 95-

03. *Compare* AGO 09-39 stating that in light of a court order holding that an independent special district is the successor-in-interest to the powers and duties of a municipal services benefit district, the records of the MSBU should be delivered to the special district. *Cf.* s. 257.36(2)(b), F.S., specifying procedures for disposition of agency records stored in the state records center in the event that the agency is dissolved or its functions are transferred to another agency.

### 3. Retention and disposal of records

Section 119.021(2)(a), F.S. requires the Division of Library and Information Services (division) of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules. Section 119.021(2)(b), F.S. *And see* s. 119.021(2)(c), F.S., providing that public officials must "systematically dispose" of records no longer needed, subject to the consent of the division in accordance with s. 257.36, F.S.

The division "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." Section 119.021(2)(d), F.S. Public officials shall assist the division by preparing an inclusive inventory of categories of public records. *Id.* The division shall establish a time period for the retention or disposal of each series of records. *Id. And see* s. 119.021(3), F.S., stating that notwithstanding the provisions of Chs. 119 or 257, F.S., certain orders that comprise final agency action must be permanently maintained. *Cf.* Fla. R. Jud. Admin. 2.430, establishing retention schedules for court records.

Section 257.36(6), F.S., states that a "public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division." The division is required to adopt reasonable rules relating to destruction and disposition of records. *Id. See generally* Chs. 1B-24 and 1B-26, F.A.C. An affected party seeking to challenge an agency's approved records retention schedule may be entitled to a hearing pursuant to Ch. 120, F.S. *L.R. v. Department of State, Division of Archives, History and Records Management*, 488 So. 2d 122 (Fla. 3d DCA 1986). *And see* AGO 04-51, regarding the application of the retention schedules to materials obtained by law enforcement agencies which become evidence in criminal investigations and prosecutions; and *Inf. Op. to Matthews*, July 12, 2004, noting the division's statutory responsibility to adopt rules establishing standards for reproduction or duplication of audio or audiovisual tape recordings.

Thus, for example, a municipality may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the statutory restrictions on disposal of records. AGO 94-75. *See also* AGOs 09-19 (city under an obligation to follow public records retention schedules established by law for information on its Facebook page which constitutes a public record); 98-54 (registration and disciplinary records stored in a national securities dealers database and used by state banking department for regulatory purposes are public records and may not be destroyed merely because an arbitration panel of the national association has ordered that they be expunged; such records are subject to statutory mandates governing destruction of

records); 96-34 (public records, "e-mail" messages are subject to statutory limitations on destruction of public records); and 75-45 (tape recordings of proceedings before a public body must be preserved in compliance with statutory record retention and disposal restrictions). *Cf.* AGO 91-23 (clerk of circuit court not authorized to expunge a court order from the Official Records, in the absence of a court order directing such action). *Accord* Inf. Op. to Hernandez, July 1, 2003 (agency not authorized to purge or expunge documents it created while carrying out what it perceived to be its official duty based upon an accusation that the agency may have been mistaken in such an assessment).

The statutory restrictions on destruction of public records apply even if the record is exempt from disclosure. For example, in AGO 81-12, the Attorney General's Office concluded that the City of Hollywood could not destroy or dispose of licensure, certification, or employment examination questions sheets except as authorized by statute. *And see* AGO 87-48 (statutory prohibition against placing anonymous materials in the personnel file of a school district employee did not permit the destruction of such materials received in the course of official school business, absent compliance with statutory restrictions on destruction of records). An exemption only removes the records from public access requirements, it does not exempt the records from the other provisions of Ch. 119, F.S., such as those requiring that public records be kept in a safe place or those regulating the destruction of public records. AGO 93-86. *See* s. 119.021, F.S. *Cf.* s. 119.07(1)(h), F.S., providing that even if an assertion is made by the custodian that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record may 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 made to the custodian; 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 may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.



## APPENDICES

### A. PUBLIC RECORDS AND MEETINGS CONSTITUTIONAL AMENDMENT

#### Article I, Section 24, Florida Constitution

##### Section 24. Access to public records and meetings.

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of 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 to the public and 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.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

## **B. GOVERNMENT IN THE SUNSHINE LAW AND RELATED STATUTES**

### **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.

Related sections read as follows:

**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).

**286.0111 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 of 1995, 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.

#### **286.26 Accessibility of public meetings to the physically handicapped.--**

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site

which would be accessible to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

## **C. THE PUBLIC RECORDS ACT**

### **CHAPTER 119, FLORIDA STATUTES**

#### **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 on-line 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.

**119.021 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 rebound 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.

**119.07 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 (e) 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 <sup>1</sup>/<sub>2</sub> 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 entity 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) 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, and 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 counsel; 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;

(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 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.

(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 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.

(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, 2011, 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 are 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 pursuant 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 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. 124(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) Information or records that may reveal the identity of a person who is a victim of a sexual offense 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 (h), 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.

**119.084 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.

**119.092 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.

### **119.15 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.

**D. Exempt, confidential and limited access public documents and meetings - exemption summaries. It is recommended that these summaries be used as a reference only--interested parties should refer to the full text in the Florida Statutes before drawing legal conclusions.**

**NOTE:** DUE TO SPACE LIMITATIONS, THE EXEMPTIONS FROM DISCLOSURE FOUND IN CHAPTER 119 (THE PUBLIC RECORDS ACT) ARE NOT SUMMARIZED IN THIS APPENDIX. PLEASE REFER TO APPENDIX C (CONTAINING THE COMPLETE TEXT OF CH. 119) FOR THE CH. 119 EXEMPTIONS.

**Section 11.0431(2), F.S.** -- The text of s. 11.0431, F.S., relating to exemptions from disclosure for legislative records, is set forth in Appendix F.

**Section 11.045(5)(b), F.S.** -- The legislative committee responsible for ethical conduct of lobbyists shall make sufficient deletions in advisory opinions issued pursuant to this subsection to prevent disclosing the identity of persons in the decisions or opinions.

**Section 11.26(1), F.S.** -- Subject to s. 11.0431, legislative employees may not reveal to anyone outside the area of their direct responsibility the contents or nature of any request for services made by a legislator except with the consent of the member making the request.

**Section 11.45(3)(i), F.S.** -- The identity of a donor or prospective donor to Enterprise Florida, Inc., who desires to remain anonymous is confidential and exempt from public disclosure requirements and such anonymity shall be maintained in the auditor's report.

**Section 11.45(3)(j), F.S.** -- The identity of a donor or prospective donor to the capital development board who desires to remain anonymous is confidential and exempt from public disclosure requirements and such anonymity shall be maintained in the auditor's report.

**Section 11.45(4)(c), F.S.** -- Audit reports prepared by the Auditor General become public records when final. Audit workpapers and notes are not public records; however, those materials necessary to support the computations in the final audit report may be made available by majority vote of the Legislative Auditing Committee after a public hearing showing proper cause.

**Section 14.28, F.S.** -- All records developed or received by a state entity relating to a Board of Executive Clemency investigation are exempt from disclosure; however, such records may be released upon the approval of the Governor.

**Section 15.07, F.S.** -- The journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon order of the Senate or court of competent jurisdiction.

**Section 17.0401, F.S.** -- Except as otherwise provided by this section, information relative to an investigation by the Division of Accounting and Auditing of the Department of Financial Services pursuant to s. 17.04 is confidential and exempt from disclosure

until the investigation is complete or ceases to be active, or if the division submits such information to a law enforcement or prosecutorial agency, until that agency's investigation is complete or ceases to be active as that term is defined in the section.

**Section 17.076(5), F.S.** -- All direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1). With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries, as defined in the section, are confidential and exempt.

**Section 17.325(3), F.S.** -- A call on the governmental efficiency hotline established by the Chief Financial Officer under this section may be anonymous and, if the caller provides his or her name, the name is confidential.

**Section 20.055(5)(b), F.S.** -- Inspector general audit workpapers and reports are public records to the extent that they do not include information which has been made confidential and exempt from s. 119.07(1). However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual shall not be disclosed to anyone else without the individual's written consent, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.

**Section 24.105(12)(a), F.S.** -- The Department of the Lottery shall determine by rule information relating to the operation of the lottery which is confidential and exempt from disclosure. Such information includes trade secrets; security measures, systems, or procedures; security reports; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the department to contract for goods and services on favorable terms; employee personnel information unrelated to compensation, duties, qualifications, or responsibilities; and information obtained by the Division of Security pursuant to its investigations which is otherwise confidential. To be deemed confidential, the information must be necessary to the security and integrity of the lottery. Confidential information may be released to other governmental entities as needed in connection with the performance of their duties; such governmental entities shall retain the confidentiality of the information as provided for in the subsection.

**Section 24.105(12)(b), F.S.** -- The Department of the Lottery shall maintain the confidentiality of the street address and telephone number of a winner, in that such information is confidential and exempt from disclosure, unless the winner consents to the release of such information, or as provided for in s. 24.115(4) or s. 409.2577.

**Section 24.108(7)(b), F.S.** -- The portion of the Lottery Department's security report that contains specific recommendations is confidential and exempt from disclosure and may be released only as authorized in the subsection.

**Section 27.151, F.S.** -- An executive order assigning or exchanging state attorneys pursuant to s. 27.14 or s. 27.15, if designated by the Governor to be confidential, is exempt from disclosure. The Governor may make public any such executive order by a subsequent executive order and at the expiration of a confidential executive order or any extensions thereof, the executive order and all associated orders and reports shall

be open to the public pursuant to Ch. 119 unless the information contained in the executive order is confidential pursuant to cited laws.

**Section 28.222(3)(g), F.S.** -- Certified copies of death certificates authorized for issuance by the Department of Health which exclude information made confidential under s. 382.008 and certified death certificates issued by another state shall be recorded by the clerk of circuit court.

**Section 28.2221, F.S.** -- The clerk of court is prohibited from placing certain records (military discharge or death certificate, and family law, probate, or juvenile court records) on a publicly available Internet website. Those records which have already been placed on the Internet must be removed if the subject of the record requests removal.

**Section 30.49(3), F.S.** -- The sheriff shall furnish to the board of county commissioners or to the budget commission, if there is one, relevant information regarding past and proposed expenditures as the board or commission deems necessary; however, the board or commission may not require confidential information concerning details of investigations. Such information is exempt from s. 119.07(1).

**Section 39.0132(3), F.S.** -- The clerk shall keep official records required by this chapter separate from other court records. The records may be inspected only upon court order by persons deemed to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, guardian ad litem, law enforcement agencies, the Department of Children and Family Services and its designees shall have a right to inspect and copy records pertaining to the child.

**Section 39.0132(4)(a)1., F.S.** -- All information obtained pursuant to this part in the discharge of official duty by any of the officials specified in the subsection is confidential and may not be disclosed to anyone other than persons entitled to receive such information under Ch. 39 or upon court order.

**Section 39.0132(4)(a)2., F.S.** -- The following information held by a guardian ad litem is confidential and exempt: medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a guardian ad litem which is identified as confidential information under Ch. 39, F.S. Such confidential and exempt information may not be disclosed to anyone except as authorized in the exemption.

**Section 39.201(1)(b), F.S.** -- Reporters to the central abuse hotline in occupation categories designated in s. 39.201(1)(b) are required to provide their names to the hotline staff. The names of reporters shall be entered into the record of the report but shall be held confidential as provided in s. 39.202.

**Section 39.201(2)(h), F.S.** -- A telephone number, fax number, or Internet protocol address from which the report was received by the hotline which is included in the abuse report pursuant to this subsection shall enjoy the same confidentiality provided to the identity of the reporter pursuant to s. 39.202.

**Section 39.202(1), F.S.** -- All records held by the Department of Children and Family Services concerning reports of child abandonment, abuse or neglect including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in possession of those entities granted access pursuant to this section.

**Section 39.202(2)(o), F.S.** -- Access to records concerning reports of child abuse or neglect shall be granted to any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released, nor shall any information otherwise made confidential or exempt by law.

**Section 39.202(5), F.S.** -- The name of any person reporting child abuse, abandonment, or neglect shall not be released to any person except as authorized in the subsection, without the written consent of the reporter.

**Section 39.202(6), F.S.** -- All records and reports of the child protection team of the Department of Health are confidential and exempt from ss. 119.07(1) and 456.057, and shall not be disclosed, except as provided in the subsection.

**Section 39.301(19), F.S.** -- When the initial interview with the child in a child protective investigation or criminal investigation is conducted at school in the presence of school staff, information received during the interview or from any other source regarding the alleged abuse or neglect of the child shall be confidential and exempt, except as otherwise provided by court order.

**Section 39.507(2), F.S.** -- Dependency adjudicatory hearings are open to the public, unless by special order the court determines that the public interest or welfare of the child is best served by closing the hearing.

**Section 39.510(4) and (5), F.S.** -- The case on appeal in a dependency proceeding and any papers filed in appellate court shall be entitled with child's initials. The papers shall remain sealed and shall not be open to public inspection. The original order of the appellate court with papers filed in an appeal shall be sealed and not open to inspection except by order of the appellate court.

**Section 39.702(5)(d), F.S.** -- An independent not-for-profit agency authorized to administer a citizen review panel established to make recommendations concerning foster care as provided in this section shall ensure that all panel members have read, understood, and signed an oath of confidentiality relating to written or verbal information provided to members for review hearings.

**Section 39.809(4), F.S.** -- All hearings involving termination of parental rights are confidential and closed to the public.

**Section 39.814(3) and (4), F.S.** -- All court records required by this part (termination of parental rights) shall be kept separate from other records. Such records are not open to public inspection. All information obtained pursuant to this part by officials specified

therein shall be confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized officials and agencies, except by court order.

**Section 39.815(4) and (5), F.S.** -- An appeal in a case involving a termination of parental rights must be docketed, and any papers filed in the appellate court must be titled with the initials, but not the name, of the child and the court case number, and the papers must remain sealed in the office of the appellate court clerk when not in use by the court and may not be open to public inspection. The original order of the appellate court, with all papers filed in the case on appeal, must remain in the clerk's office, sealed and not open to inspection except by court order.

**Section 39.821(1), F.S.** -- Information collected pursuant to the security background investigation for a guardian ad litem is confidential and exempt from s. 119.07(1).

**Section 39.827(4), F.S.** -- The hearing for appointment of a guardian advocate is confidential. The court records are confidential and exempt from s. 119.07(1) and may be inspected only upon court order or by the persons and entities identified in the subsection. All information obtained pursuant to this part is confidential and exempt from s. 119.07(1) and shall not be disclosed to anyone other than authorized personnel of the court or the Department of Children and Family Services and its designees, except upon court order.

**Section 39.908, F.S.** -- Information about clients received by the Department of Children and Family Services or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection or otherwise is confidential and exempt from s. 119.07(1). Except as provided in the section, information about the location of domestic violence centers and facilities is confidential and exempt from s. 119.07(1).

**Section 40.50(2), F.S.** -- The court should emphasize the confidentiality of notes taken by jurors as provided in this subsection.

**Section 44.102(3), F.S.** -- All written communications in a court-ordered mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of Ch. 119.

**Section 44.201(5), F.S.** -- Any information relating to a dispute which is obtained by any person while performing any duties for a Citizen Dispute Settlement Center is exempt from s. 119.07(1).

**Section 44.405(1), F.S.** -- Except as provided in the section, mediation communications, as defined in the Mediation Confidentiality and Privilege Act, are confidential.

**Section 61.052(8), F.S.** -- Disclosure of social security numbers provided by parties to a dissolution of marriage proceeding shall be limited to child support enforcement purposes.

**Section 61.125(7), F.S.** -- Except as otherwise provided in this section, all communications made by, between, or among the parties and the parenting coordinator

during parenting coordination sessions are confidential, and the parenting coordinator and each party designated in the order appointing the coordinator may not testify or offer evidence about communications made by, between, or among the parties and the parenting coordinator during parenting coordination sessions, except as provided in the statute.

**Section 61.13(7) and (8), F.S.** -- Disclosure of social security numbers provided by parties to a paternity or child support proceeding shall be limited to child support enforcement purposes.

**Section 61.1827, F.S.** -- Any information that reveals the identity of applicants for or recipients of child-support services, including the name, address, and telephone number of such persons, held by a non-Title IV-D county child-support enforcement agency is confidential and exempt from public disclosure requirements.

**Section 61.183(3), F.S.** -- Information concerning mediation proceedings involving contested issues relating to custody parental responsibility, primary residence, access to, visitation with, or support of a child pursuant to this section which is obtained by any person performing mediation duties is exempt from s. 119.07(1).

**Section 61.404, F.S.** -- A guardian ad litem shall maintain as confidential all information and documents received from any source described in s. 61.403(2) and may not disclose such information or documents except, in the guardian ad litem's discretion, in a report to the court or as directed by the court.

**Section 63.022(4)(j), F.S.** -- The records of all proceedings concerning custody and adoption of a minor are confidential and exempt except as provided in s. 63.162.

**Section 63.0541, F.S.** -- All information contained in the Florida Putative Father Registry is confidential and exempt except as provided in the section.

**Section 63.089(8), F.S.** -- Except as provided in the exemption, all records relating to a petition to terminate parental rights pending adoption are subject to the provisions of s. 63.162, F.S.

**Section 63.102(1), F.S.** -- Except for a joint petition for the ~~1339~~ adoption of a stepchild, a relative, or an adult, any name by which the minor was previously known may not be disclosed in the petition for adoption, the notice of hearing, or the judgment of adoption, or the court docket as provided in s. 63.162(3).

**Section 63.162(1), F.S.** -- Hearings held in proceedings under the Florida Adoption Act are closed.

**Section 63.162(2), F.S.** -- All papers and records pertaining to an adoption are confidential and subject to inspection only upon court order. Adoption papers and records of the Department of Children and Family Services, a court, or any other governmental agency are exempt from s. 119.07(1).

**Section 63.162(4), F.S.** -- A person may not disclose from the records the name and identity of a birth parent, an adoptive parent, or an adoptee except as authorized in the

subsection.

**Section 63.162(6), F.S.** -- Except as provided in s. 63.162(4), identifying information regarding birth parents, adoptive parents, and adoptees may not be disclosed unless a birth parent, adoptive parent, or adoptee has authorized in writing the release of such information concerning himself or herself.

**Section 63.165(1), F.S.** -- Except as provided in this section, information in the state registry of adoption information is confidential and exempt.

**Section 69.081(8), F.S.** -- Any portion of an agreement which conceals information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy and may not be enforced.

**Section 73.0155, F.S.** -- Except as provided in the exemption, specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages is confidential and exempt from disclosure requirements, if the owner requests in writing that the business information be held confidential and exempt.

**Section 90.502(5), F.S.** -- Communications made by a person who seeks or receives services from the Department of Revenue under the child support enforcement program to the attorney representing the department shall be confidential and privileged and shall not be disclosed to anyone other than the agency except as provided in this section.

**Section 92.56, F.S.** -- The confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h) must be maintained in court records pursuant to s. 119.0714(1)(h) and in court proceedings, including testimony from witnesses.

**Section 97.057(2)(a)4., F.S.** -- All declinations to register to vote pursuant to this section will remain confidential and may be used only for voter registration purposes.

**Section 97.0585, F.S.** -- The following information is confidential and exempt and may be used only for purposes of voter registration: declinations to register to vote made pursuant to ss. 97.057 and 97.058; information relating to the place where a person registered to vote or where a person updated a voter registration; the social security number, driver's license number, and Florida identification number of a voter registration applicant or voter. The signature of a voter registration applicant or a voter is exempt from the copying requirements. The names, addresses, and telephone numbers of victims of stalking or aggravated stalking are exempt in the same manner as participants in the Address Confidentiality Program for Victims of Domestic Violence under s. 741.465 are exempt from disclosure, provided the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with ss. 741.401-741.409.

**Section 98.045(3), F.S.** -- Each supervisor shall maintain for at least 2 years and make available for public inspection and copying, all records concerning implementation



of registration list maintenance programs and activities conducted pursuant to cited statutes. The records must include lists of the name and address of each person to whom a notice was sent and information as to whether each such person responded to the mailing, but may not include any information that is confidential or exempt from public records requirements under the Election Code.

**Section 101.5607(1)(d), F.S.** -- Section 119.071(1)(f) which provides an exemption from s. 119.07(1) for data processing software designated as sensitive, applies to all software on file with the Department of State.

**Section 101.62(3), F.S.** -- Information regarding a request for absentee ballot that is recorded by the supervisor of elections pursuant to this subsection is confidential and exempt from s. 119.07(1) and shall be made available to or reproduced only for the individuals and entities set forth in the exemption, for political purposes only.

**Section 106.0706, F.S.** -- All user identifications and passwords held by the Department of State pursuant to s. 106.0705 are confidential and exempt from disclosure. Information entered in the electronic filing system for purposes of generating a report pursuant to s. 106.0705 is exempt but is no longer exempt once the report is generated and filed with the Division of Elections.

**Section 106.25(7), F.S.** -- Except as otherwise provided in the subsection, sworn complaints filed pursuant to Ch. 106 with the Florida Elections Commission, investigative reports or other papers of the commission relating to a violation of Chs. 106 or 104, and proceedings of the commission relating to a violation of said chapters are confidential and exempt from s. 119.07(1) and s. 286.011.

**Section 110.1091(2), F.S.** -- A state employee's personal identifying information contained in records held by the employing agency relating to an employee's participation in an employee assistance program is confidential and exempt.

**Section 110.1127(3)(d) and (e), F.S.** -- It is a first degree misdemeanor to willfully use criminal records information obtained pursuant to security background checks required for certain positions for purposes other than screening for employment or to release such information to other persons for purposes other than screening for employment. It is a felony of the third degree for any person willfully, knowingly, or intentionally to use juvenile records information for any purpose other than specified in this section or to release such information to other persons other than specified in this section.

**Section 110.123(5)(a), F.S.** -- A physician's fee schedule used in the health and accident plan is not available for inspection or copying by medical providers or other persons not involved in the administration of the state group insurance program.

**Section 110.123(9), F.S.** -- Patient medical records and medical claims records of state employees, former state employees, and their eligible covered dependents, in the custody or control of the state group insurance program are confidential and exempt.

**Section 110.201(4), F.S.** -- All discussions between the Department of Management

Services and the Governor, and between the Department of Management Services and the Administration Commission, or agency heads, or between any of their respective representatives, relative to collective bargaining, are exempt from s. 286.011 and all work products relative to collective bargaining developed in conjunction with such discussions are confidential and exempt.

**Section 112.0455(8)(l), F.S.** -- All documentation relative to a state agency employer's explanation as to why a job applicant or employee's explanation of positive drug test results is unsatisfactory, along with the report of the positive test results, are confidential and exempt.

**Section 112.0455(8)(u), F.S.** -- The documentation prepared by a state agency employer which formed the basis of the employer's determination that reasonable suspicion existed to warrant drug testing under this section is confidential and exempt, except that a copy of this documentation shall be given to the employee upon request.

**Section 112.0455(11)(a), F.S.** -- Except as provided in the subsection, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a state agency's drug testing program are confidential and are exempt from disclosure except as provided in this section.

**Section 112.08(7), F.S.** -- Medical records and medical claims records in the custody of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan are confidential and are exempt from s. 119.07(1). Such records shall not be furnished to any person other than the employee or the employee's legal representative, except as provided in the subsection.

**Section 112.08(8), F.S.** -- Patient medical records and medical claims records of water management district employees, former employees, and eligible dependents in the custody or control of a water management district under its group insurance plan established pursuant to s. 373.605 are confidential and exempt. Such records shall not be furnished to any person other than the employee or the employee's legal representative except as provided in the subsection.

**Section 112.21(1), F.S.** -- All records identifying individual participants in any contract or account under s. 112.21 (relating to tax-sheltered annuities or custodial accounts for governmental employees) and their personal account activities are confidential and exempt.

**Section 112.215(7), F.S.** -- All records identifying individual participants in any deferred compensation plan and their personal account activities shall be confidential and exempt from s. 119.07(1).

**Section 112.3188(1), F.S.** -- The identity of an individual who discloses in good faith to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated certain laws or committed, or

is suspected of committing, specified acts may not be disclosed to anyone other than staff of the above officials without the written consent of the individual, unless such official determines that disclosure is authorized for the reasons specified in the subsection.

**Section 112.3188(2), F.S.** -- Except as specifically authorized by s. 112.3189, or this subsection, all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Department of Law Enforcement or the Florida Commission on Human Relations, is confidential and exempt from disclosure if the information is being received or derived from allegations as set forth in subsection (1) and an investigation is active. All information received by a local chief executive officer or appropriate local official or information produced or derived from fact-finding or investigations conducted by a local government pursuant to s. 112.3187(8)(b), is confidential and exempt if the information is received or derived from allegations as set forth in s. 112.3188(1)(a) or (b) and the investigation is active.

**Section 112.31901, F.S.** -- If certified pursuant to the exemption, an investigatory record of the Chief Inspector General within the Office of the Governor or of the employee designated by an agency head as the agency inspector general under s. 112.3189 is exempt from disclosure requirements for the time period specified in the exemption. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act.

**Section 112.3215(8)(b), F.S.** -- All proceedings, the complaint, and other records relating to the investigation of a sworn complaint of a violation of this section which relates to executive branch and Constitution Revision Commission lobbyists, and any meeting held pursuant to the investigation, are confidential and exempt from disclosure until the alleged violator requests in writing that such investigation and associated records and meetings be made public, or until the Ethics Commission determines whether probable cause exists to believe that a violation has occurred.

**Section 112.3215(8)(d), F.S.** -- Records relating to an audit of a lobbying firm lobbying the executive branch or the Constitution Revision Commission or an investigation of violations of the lobbying compensation reporting laws and any meetings held pursuant to the investigation or at which such an audit is discussed are exempt from public records and meetings requirements either until the lobbying firm requests in writing that such records and meetings be made public or until the Commission on Ethics determines there is probable cause that the audit reflects a violation of the reporting laws.

**Section 112.324(2), F.S.** -- The complaint and records relating to the complaint or to any preliminary investigation held by the Ethics Commission, a Commission on Ethics and Public Trust established by a county or municipality, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1), and any proceeding conducted by the commission, or a county or municipality that has established such local investigatory

process, is exempt from open meetings requirements until the complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records and proceedings be made public, or until the commission or a county or municipality that has established such local investigatory process determines, based on investigation, whether probable cause exists to believe that a violation has occurred.

**Section 112.533(2)(a), F.S.** -- Except as otherwise provided in this subsection, a complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation of the complaint is confidential until the investigation ceases to be active, or until the agency head or agency head's designee provides written notice to the officer who is the subject of the complaint, that the agency has either concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or concluded the investigation with a finding to proceed with disciplinary action or to file charges.

**NOTE: DUE TO SPACE LIMITATIONS, THE EXEMPTIONS FROM DISCLOSURE FOUND IN CHAPTER 119 (THE PUBLIC RECORDS ACT) ARE NOT SUMMARIZED IN THIS APPENDIX. PLEASE REFER TO APPENDIX C (CONTAINING THE COMPLETE TEXT OF CH. 119) FOR THE CH. 119 EXEMPTIONS.**

**Section 121.031(5), F.S.** -- The names and addresses of retirees are confidential and exempt from s. 119.07(1) to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except as authorized in the subsection.

**Section 121.4501(19), F.S.** -- Personal identifying information regarding a participant in the Public Employee Optional Retirement Program contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt from public disclosure requirements.

**Section 125.0104(3)(h), F.S.** -- Department of Revenue records showing the amount of tourist development taxes collected, including the amount of taxes collected for and from each county in which the tourist development tax is applicable, are open for inspection except as provided in s. 213.053.

**Section 125.0104(9)(d)1., F.S.** -- Information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from disclosure.

**Section 125.0104(9)(d)2., F.S.** -- When held by a county tourism promotion agency, the following are exempt from disclosure: a trade secret, as defined in s. 812.081; booking business records, as defined in s. 255.047; trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), as amended.

**Section 125.012(26), F.S.** -- Pursuant to authorization granted by this section concerning certain transportation-related projects defined in s. 125.011, a board of county commissioners is empowered to maintain the confidentiality of trade information and data to the extent that such information is protected under applicable federal and federally-enforced patent and copyright laws.

**Section 125.025, F.S.** -- Pursuant to authorization granted by this section concerning operation of export trading companies, a board of county commissioners is empowered to maintain the confidentiality of trade information to the extent such information is protected under applicable federal export trading company law, and under federal and federally enforced patent and copyright laws.

**Section 125.355(1), F.S.** -- Appraisals, offers, and counteroffers relating to a county's purchase of real property pursuant to this section are not available for public disclosure and are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board of county commissioners. If a contract or agreement for purchase is not submitted to the board for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end. A county that does not utilize the exemptions provided in this section may follow any procedure not in conflict with Ch. 119 for the purchase of real property which is authorized in its charter or established by ordinance.

**Section 125.585(2), F.S.** -- A county employee's personal identifying information contained in records held by the employing county relating to that employee's participation in an employee assistance program is confidential and exempt.

**Section 125.901(11), F.S.** -- Personal identifying information of a child or the parent or guardian of the child, held by a council on children's services, juvenile welfare board, or other similar entity created under this section or by special law, or held by a service provider or researcher under contract with such entity, is exempt from disclosure requirements.

**Section 155.40(8)(b), F.S.** -- A "complete sale", as defined in the statute, of a public hospital to a private purchaser shall not be construed as (1) a transfer of governmental function to the private purchaser; (2) constituting a financial interest of the public seller in the private purchaser; (3) making the private purchaser an "agency" as that term is used in statutes; (4) making the private purchaser an integral part of the public seller's decisionmaking process; or (5) indicating that the private purchaser is "acting on behalf of a public agency" as that term is used in statutes.

**Section 163.01(15)(m), F.S.** -- Material received by a public agency in connection with its joint ownership or right to the services, output, capacity, or energy of an electric project under the Florida Interlocal Cooperation Act, which is designated by the person supplying such material as proprietary confidential business information, as defined in the paragraph, or which a court of competent jurisdiction has designated as confidential or secret, shall be kept confidential and exempt from s. 119.07(1).

**Section 163.64, F.S.** -- An agency that participates in the creation or administration

of a collaborative client information system may share client information, including confidential client information, with other members of the collaborative system as long as the restrictions governing the confidential information are observed by any other agency granted access to the confidential information.

**Section 166.0444, F.S.** -- A municipal employee's personal identifying information contained in records held by the employing municipality relating to that employee's participation in an employee assistance program is confidential and exempt.

**Section 166.045(1), F.S.** -- Appraisals, offers, and counteroffers relating to a municipality's purchase of real property pursuant to this section are not available for public disclosure and are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing body of the municipality. If a contract or agreement for purchase is not submitted to the governing body for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end. A municipality that does not utilize the exemptions from Ch. 119 provided in this section may follow any procedure not in conflict with Ch. 119 for the purchase of real property which is authorized in its charter or established by ordinance.

**Section 192.0105(4), F.S.** -- Taxpayers have the right to have information kept confidential, including those records set forth in the exemption.

**Section 192.105, F.S.** -- Federal tax information obtained pursuant to 26 U.S.C. s. 6103 is confidential and exempt from s. 119.07(1).

**Section 193.074, F.S.** -- All returns of property and returns required by former s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the Department of Revenue, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

**Section 193.114(5), F.S.** -- For the purpose of furnishing copies of the tax roll under 119.07(1), the property appraiser is the custodian of the tax roll. The Department of Revenue or any state or local agency may use copies of the tax roll received by it for official purposes and shall permit inspection and examination thereof pursuant to s. 119.07(1), but is not required to furnish copies of the records. A social security number submitted under s. 196.011(1) (application for tax exemption) is confidential and exempt.

**Section 195.027(3), F.S.** -- Financial records produced by a taxpayer under this section shall be confidential in the hands of the property appraiser, the Department of Revenue, the tax collector, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such records are exempt from s. 119.07(1).

**Section 195.027(6), F.S.** -- The information form disclosing unusual fees, costs and terms of financing of the sale or purchase of property shall be filed with the clerk of the circuit court at the time of recording and shall be confidential and exempt in the hands of all persons after delivery to the clerk, except as provided in the subsection.

**Section 195.084(1), F.S.** -- This section (authorizing the exchange of information among the Department of Revenue, the property appraisers, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability) shall supersede statutes prohibiting disclosure only with respect to those entities, but the Department of Revenue may establish regulations setting reasonable conditions upon access to and custody of such information. The Auditor General, the Office of Program Policy Analysis and Government Accountability, the tax collectors and the property appraisers shall be bound by the same requirements of confidentiality as the department.

**Section 195.096(2)(e), F.S.** -- All data and samples developed or obtained by the Department of Revenue in the conduct of assessment ratio studies are confidential and exempt until a presentation of the study findings is made to the property appraiser.

**Section 196.101(4)(c), F.S.** -- Records of gross income produced by a taxpayer claiming exemption for totally and permanently disabled persons are exempt from s. 119.07(1) and are confidential in the hands of the property appraiser, the Department of Revenue, the tax collector, the Office of Program Policy Analysis and Government Accountability, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

**Section 202.195, F.S.** -- Proprietary confidential business information, as defined in the exemption, which is obtained from a telecommunications company or franchised cable company for the purposes of imposing fees for occupying the public rights-of-way, assessing the local communications services tax, or regulating the public rights-of-way, held by a local government entity, is confidential and exempt from public disclosure requirements. Maps or other engineering data held by a local governmental entity that relate to the exact location and capacity of facilities for the provision of communications services shall be exempt from disclosure but only for 60 days after completion of construction of the facilities.

**Section 206.27(2), F.S.** -- Any information concerning audits in progress or those records or files of the Department of Revenue described in this section which are currently the subject of pending investigation by the Department of Revenue or the Florida Department of Law Enforcement are exempt from s. 119.07(1) and are considered confidential; and may not be released except as authorized in the subsection.

**Section 211.125(10), F.S.** -- All returns and information filed with the Department of Revenue under this part providing for a tax on production of oil and gas are confidential and exempt from s. 119.07(1), and such returns or information shall be protected from unauthorized disclosures as provided in s. 213.053.

**Section 211.33(5), F.S.** -- The use of information contained in any tax return filed by a producer (*i.e.*, a person severing solid minerals from the soils and waters of the state) or in any books, records or documents of a producer shall be as provided in s. 213.053, and shall be confidential and exempt from s. 119.07(1).

**Section 212.0305(3)(d), F.S.** -- Records of the Department of Revenue showing the amount of taxes collected, including taxes collected from each county in which a resort tax is levied, are subject to the provisions of s. 213.053, and are confidential and exempt from s. 119.07(1).

**Section 213.015(9), F.S.** -- Unless otherwise specified by law, Florida taxpayers have the right to have taxpayer tax information kept confidential.

**Section 213.053(2)(a), F.S.** -- All information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from s. 119.07(1).

**Section 213.0532(8), F.S.** -- Any financial records obtained pursuant to this section relating to information-sharing arrangements between the Department of Revenue and financial institutions may be disclosed only for the purpose of, and to the extent necessary, to administer and enforce the tax laws of this state.

**Section 213.0535(5), F.S.** -- Any provision of law imposing confidentiality upon data shared under this section (providing for the Registration Information Sharing and Exchange Program within the Department of Revenue), including, but not limited to, any provision imposing penalties for disclosure, applies to recipients of this data and their employees. Data exchanged under this section may not be provided to any person or entity other than as provided in this section and such data may not be used for any purpose other than for enforcing those tax or licensing provisions.

**Section 213.21(3)(a), F.S.** -- The Department of Revenue shall maintain records of all compromises of a taxpayer's liability; the records of compromises shall not be subject to disclosure pursuant to s. 119.07(1) and shall be considered confidential information governed by s. 213.053.

**Section 213.22(2), F.S.** -- The Department of Revenue may not disclose, pursuant to s. 119.07(1), a technical assistance advisement or request therefor to any person other than the person requesting the advisement or his or her representative, or for official departmental purposes without deleting identifying details of the person to whom the advisement was issued.

**Section 213.27(6), F.S.** -- Confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from s. 119.07(1) and such debt collection or auditing agencies are bound by the same requirements of confidentiality as the department.

**Section 213.28(6), F.S.** -- Certified public accountants entering into contracts with the Department of Revenue are bound by the same confidentiality requirements and



subject to the same penalties as the department under s. 213.053. Any return, return information, or documentation obtained from the Internal Revenue Service under an information-sharing agreement is confidential and exempt from disclosure and shall not be divulged or disclosed in any manner by any department officer or employee to any certified public accountant under a contract authorized by this section unless the department and the Internal Revenue Service mutually agree to such disclosure.

**Section 215.44(8)(a), F.S.** -- Records and information of the State Board of Administration relating to acquiring, hypothecating, or disposing of real property or specified related interests are confidential and exempt from s. 119.07(1) in order to achieve certain stated purposes. Records relating to value, offers, counteroffers, or negotiations are confidential and exempt until closing is complete and all funds have been disbursed. Records relating to tenants, leases, and other specified matters are confidential and exempt until the executive director determines that release would not be detrimental to the board's interest or conflict with its fiduciary responsibilities.

**Section 215.44(8)(b), F.S.** -- Records and other information relating to investments made by the State Board of Administration are confidential and exempt from s. 119.07(1) until 30 days after completion of an investment transaction. However, if in the executive director's opinion, it would be detrimental to the board's financial interests or cause a conflict with its fiduciary responsibilities, information concerning service provider fees may be kept confidential until 6 months after negotiations relating to such fees have been terminated.

**Section 215.44(8)(c)2., F.S.** -- "Proprietary confidential business information", as defined in the exemption, that is held by the State Board of Administration regarding alternative investments is confidential and exempt for a period of 10 years after the termination of the alternative investment unless disclosure is permitted under the circumstances set forth in the exemption.

**Section 215.555(4)(f), F.S.** -- Information described in 215.557 which is contained in an examination report conducted on an insurer pursuant to this subsection, is confidential and exempt, as provided in s. 215.557.

**Section 215.557, F.S.** -- The reports of insured values under certain insurance policies by zip code submitted to the State Board of Administration pursuant to s. 215.555 are confidential and exempt.

**Section 220.242, F.S.** -- Estimated tax returns filed under the Florida Income Tax Code are confidential, and exempt from s. 119.07(1).

**Section 252.355(5), F.S.** -- Records relating to the registration of persons with special needs for emergency management purposes pursuant to this section are confidential and exempt from s. 119.07(1), except such information is available to other emergency response agencies, as determined by the local emergency management director. Local law enforcement agencies shall be given complete shelter roster information upon request.

**Section 252.88(1), F.S.** -- Trade secret information which applicable federal law

authorizes an employer to exclude from materials submitted shall be furnished to the State Hazardous Materials Emergency Response Commission upon request. However, such information shall be confidential and exempt from s. 119.07(1) and shall not be disclosed by the Commission except as authorized in the subsection.

**Section 252.88(2) and (3), F.S.** -- When applicable law authorizes the withholding of disclosure of the location of specific hazardous chemicals, such information is confidential and exempt from s. 119.07(1). All information, including, but not limited to, site plans and specific location information on hazardous chemicals furnished to a fire department pursuant to applicable law, shall be confidential and exempt while in the possession of the fire department.

**Section 252.943, F.S.** -- In accordance with the federal Clean Air Act, trade secret information provided to the Department of Community Affairs by the owner or operator of a stationary source subject to the Accidental Release Prevention Program is confidential and exempt from disclosure, except as provided in the exemption.

**Section 253.025(6)(d), F.S.** -- Appraisal reports prepared for the Board of Trustees of the Internal Improvement Trust Fund or an agency pursuant to this section (acquisition of state-owned lands for purposes other than preservation, conservation, and recreation purposes) are confidential and exempt until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. However, the Division of State Lands may disclose appraisal information to public agencies or nonprofit organizations under the conditions specified in the paragraph. The agency may release an appraisal report when the passage of time has rendered the conclusions of value invalid.

**Section 253.025(7)(d), F.S.** -- All offers or counteroffers shall be documented in writing and shall be confidential and exempt from s. 119.07(1) until an option contract is executed, or if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the Board of Trustees of the Internal Improvement Trust Fund.

**Section 253.034(6)(g), F.S.** -- A written valuation of land determined to be surplus and related documents are confidential and exempt. The exemption expires 2 weeks before the contract or agreement regarding the disposition of the surplus land is first considered for approval by the Board of Trustees of the Internal Improvement Trust Fund.

**Section 255.047(2), F.S.** -- The booking business records (as defined in the section) of a publicly owned or operated convention center, sports stadium, coliseum, or auditorium are exempt from disclosure. However, such facility shall furnish its booking business records and related information to the Department of Revenue upon the department's request if necessary for the department to administer its duties.

**Section 255.25001(2)(b), F.S.** -- The studies of the evaluation process which are developed by the Department of Management Services pursuant to this subsection shall be considered confidential and exempt to the same extent that appraisal reports are

considered confidential and exempt from s. 119.07(1) pursuant to s. 253.025(6)(d).

**Section 257.261, F.S.** -- Registration and circulation records of public libraries, except statistical reports of registration and circulation are confidential and exempt from s. 119.07(1). Except as authorized by court order, a person may not make known in any manner any information contained in such records, except as provided in this section. Violation of this section is a second degree misdemeanor.

**Section 257.38(2) and (3), F.S.** -- Public records transferred to the Division of Library and Information Services of the Department of State are subject to s. 119.07(1), except that any record provided by law to be confidential shall not be made accessible until 50 years after creation of the record. Any nonpublic manuscript or other archival material which is placed in the keeping of the division under special terms and conditions, shall be made accessible only in accordance with such law terms and conditions and shall be exempt from s. 119.07(1) to the extent necessary to meet the terms and conditions for a nonpublic manuscript or other archival material.

**Section 257.38(4), F.S.** -- Any nonpublic manuscript or other archival material that is donated to and held by an official archive of a municipality or county contingent upon special terms and conditions that limit the right to inspect or copy such material is confidential and exempt from disclosure requirements except as otherwise authorized in the special conditions. Such nonpublic manuscript or archival material shall be made available for inspection and copying 50 years after the date of the creation of the nonpublic manuscript or material, at an earlier date specified in the special terms and conditions, or upon a showing of good cause before a court of competent jurisdiction.

**Section 259.041(7)(e), F.S.** -- Generally, appraisal reports prepared for the Board of Trustees of the Internal Improvement Trust Fund or an agency pursuant to this section (acquisition of state-owned lands for preservation, conservation, and recreation purposes) are confidential and exempt until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. However, disclosure is authorized under some circumstances, as described in the paragraph. The agency may release a report when the passage of time has rendered the conclusions of value invalid or when the acquiring agency has terminated negotiations.

**Section 259.041(8)(c), F.S.** -- All offers and counteroffers for land acquisition are confidential and exempt from s. 119.07(1) until an option contract is executed, or if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the Board of Trustees of the Internal Improvement Trust Fund.

**Section 265.605(2), F.S.** -- Information which, if released, would identify donors and amounts contributed by donors to the Cultural Endowment Program Trust Fund, or to the local organization's matching fund, is, at the request of the donor, confidential and exempt from s. 119.07(1). Information which, if released, would identify prospective donors is confidential and exempt unless the name has been obtained from another organization or source.

**Section 267.076, F.S.** -- Information identifying a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark who desires to remain anonymous is confidential and exempt.

**Section 267.135, F.S.** -- Information identifying the location of an archaeological site held by the Division of Historical Resources of the Department of State is exempt from public disclosure if the division finds that disclosure will create a substantial risk of harm, theft, or destruction at such site.

**Section 267.17(3), F.S.** -- The identity of donors who desire to remain anonymous shall be confidential and exempt from s. 119.07(1), and that anonymity shall be maintained in the auditor's report of a citizen support organization to the Division of Historical Resources of the Department of State.

**Section 267.1732(8), F.S.** -- The identity of a donor or prospective donor of property to a direct-support organization of the University of West Florida which is established to support the historic preservation efforts of the university, who desires to remain anonymous, is confidential and exempt from disclosure; and that anonymity must be maintained in the auditor's report.

**Section 267.1736(9)(a), F.S.** -- The identity of a donor or prospective donor to the direct-support organization, authorized by the University of Florida to assist it in carrying out its historic preservation and historic preservation education purposes and responsibilities for the City of St. Augustine, who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt, and that anonymity must be maintained in the auditor's report.

**Section 279.11(1), F.S.** -- Records with regard to ownership of, or security interests in, registered public obligations are confidential and exempt from s. 119.07(1).

**Section 280.16(3), F.S.** -- Any information contained in a report of a qualified public depository required under this chapter or any rule adopted under this chapter, together with any information required of a financial institution that is not a qualified public depository, shall, if made confidential by any law of the United States or of this state, be considered confidential and exempt from s. 119.07(1) and not subject to dissemination to anyone other than the Chief Financial Officer under the provisions of this chapter.

**Section 281.301, F.S.** -- The following are confidential and exempt from ss. 119.07(1) and 286.011: Information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions; information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2); and all meetings relating directly to or that would reveal such systems or information.

**Section 282.318(4), F.S.** -- Risk analysis information relative to security threats to data, information, and information technology resources of an agency is confidential and exempt. Internal policies and procedures to assure the security of the data and information technology resources that, if disclosed, could facilitate the unauthorized

modification, disclosure, or destruction of data, information, or information technology resources are confidential and exempt. Results of periodic internal audits and evaluations of the security program for an agency's data and information technology resources are confidential and exempt.

**Section 284.40(2), F.S.** -- Claim files maintained by the Division of Risk Management of the Department of Financial Services are confidential, and shall be only for the use of the Department of Financial Services in fulfilling its duties and are exempt from s. 119.07(1).

**Section 286.011(8), F.S.** -- A state or local governmental board or commission 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 conditions set forth in the subsection are met.

**Section 286.0113(1), F.S.** -- 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 open meetings requirements.

**Section 286.0113(2), F.S.** -- A meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(1), is exempt from open meetings requirements. However, a complete recording shall be made of any such exempt meeting. The recording is exempt 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 first. If the agency rejects all sealed replies, the recording remains exempt 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.

**Section 287.0595(3), F.S.** -- Bids submitted to the Department of Environmental Protection for pollution response action contracts are confidential and exempt from s. 119.07(1), until selection of a bidder on such contract has been made and a contract signed or until the bids are no longer under active consideration.

**Section 288.047(5)(e), F.S.** -- Information relating to wages and performance of participants which is submitted pursuant to a grant agreement prepared by Workforce Florida, Inc., pursuant to the Quick-Response Training Program which, if released, would disclose the identity of the person to whom the information pertains or the person's employer is confidential and exempt from s. 119.07(1).

**Section 288.047(7), F.S.** -- In providing instruction pursuant to the Quick-Response Training Program, materials relating to methods of manufacture or production, potential trade secrets, business transactions, or proprietary information received or discovered by employees of specified agencies are confidential and exempt from s. 119.07(1).

**Section 288.075, F.S.** -- Upon written request, information held by an economic development agency concerning the plans or interests of a private entity to locate, relocate or expand its business activities in Florida is confidential and exempt from

disclosure for 12 months after the agency receives a request for confidentiality or the information is otherwise disclosed, whichever occurs first. Confidentiality may be extended for up to an additional 12 months under certain conditions. A public employee or officer may not enter into a binding agreement with such entity until 90 days after the information is made public except as provided therein. Trade secrets and the federal employer identification number, unemployment compensation account number, or Florida sales tax registration number held by an economic development agency are confidential and exempt. Proprietary confidential business information is confidential and exempt until such information is otherwise publicly available or is no longer treated by the proprietor as confidential business information. Certain information related to sales, receipts, wages and taxes as specified therein held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses is exempt and confidential for a period not to exceed the duration of the incentive agreement or upon termination of the agreement.

**Section 288.1224(7), F.S.** -- The identity of any person who responds to a marketing or advertising research project conducted by the Florida Commission on Tourism pursuant to this section, and trade secrets, as defined by s. 812.081, obtained pursuant to such research, are confidential and exempt from disclosure.

**Section 288.1226(6), F.S.** -- The identity of a donor or prospective donor to the Florida Tourism Industry Marketing Corporation who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report.

**Section 288.1226(8), F.S.** -- The identity of any person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation pursuant to this section, and trade secrets, as defined by s. 812.081, obtained pursuant to such research, are exempt from disclosure.

**Section 288.12295, F.S.** -- The identity of a donor or prospective donor to the direct-support organization authorized under s. 288.1229 to assist in the promotion of sports-related industries who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt and such anonymity shall be maintained in audit reports.

**Section 288.776(3)(d), F.S.** -- Personal financial records, trade secrets or proprietary information of applicants for loans extended by the Florida Export Finance Corporation are confidential and exempt from s. 119.07(1).

**Section 288.809(4), F.S.** -- The identity of a donor or prospective donor to the Florida Intergovernmental Relations Foundation who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report of the foundation.

**Section 288.9520, F.S.** -- Materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, financial and proprietary information and agreements or

proposals to receive funding that are received, generated, ascertained, or discovered by Enterprise Florida, Inc., including its affiliates and participants, are confidential and exempt from disclosure, except that a recipient of Enterprise Florida, Inc., research funds shall make available, upon request, the title and description of the project, the name of the researcher, and the amount and source of funding provided for the project.

**Section 288.9551(2) and (3), F.S.** -- Specified information held by the Scripps Florida Funding Corporation under s. 288.955 is confidential and exempt from disclosure requirements. That portion of a meeting of the board of directors of the corporation at which such information is presented or discussed is exempt from s. 286.011, F.S. and Art. I, s. 24, Fla. Const. Records generated during any portion of an exempt meeting are confidential and exempt .

**Section 288.9607(5), F.S.** -- Personal financial records, trade secrets or proprietary information of applicants delivered to or obtained by the Florida Development Finance Corporation are confidential and exempt from s. 119.07(1).

**Section 288.9626, F.S.** -- Materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, or discovered through research by universities and other publicly supported organizations in this state; information identifying an investor or potential investor wishing to remain anonymous; information received from another state or federal government that is confidential under their law; and proprietary confidential business information for alternative investments held by the Florida Opportunity Fund and the Institute for the Commercialization of Public Research are confidential and exempt and may not be released except as provided therein. Meetings of the board of the fund or the institute at which such confidential information is discussed are exempt from s. 286.011 and Art. I, s. 24(b); the exempt portion of meeting shall be records and transcribed as provided therein.

**Section 288.982, F.S.** -- Specified records relating to military installations or missions subject to the United States Department of Defense Base Realignment and Closure 2005 process which are held by the Governor's Advisory Council on Base Realignment and Closure, Enterprise Florida, Inc., or the Office of Tourism, Trade, and Economic Development are confidential and exempt. Meetings or portions of meetings of the Governor's Advisory Council at which such confidential records are presented or discussed are exempt from open meetings requirements.

**Section 288.985, F.S.** -- Specified information held by the Florida Council on Military Base and Mission Support relating to military base realignment and closure is exempt and that portion of the council meeting where such information is presented and discussed is closed as well as records generated during the closed meeting.

**Section 288.99(15), F.S.** -- Except as otherwise provided in the exemption, information concerning an investigation or Office of Financial Regulation review of a certified capital company is confidential and exempt from disclosure until the investigation or review is complete or ceases to be "active" as that term is defined in the exemption. However, certain records may remain confidential if disclosure would result

in any of the consequences listed in the exemption.

**Section 292.055, F.S.** -- The identity of a donor or prospective donor to the Department of Veterans' Affairs direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt; portions of meetings of the direct support organization during which the identity of donors or prospective donors are discussed are exempt.

**Section 296.09(1), F.S.** -- The health record and annual reevaluation of residents of the Veterans' Domiciliary Home of Florida are confidential and exempt from disclosure and must be preserved for a period of time as determined by the director.

**Section 310.102(3)(e) and (5)(a), F.S.** -- Except as otherwise provided in the section, all information obtained by the probable cause panel of the Board of Pilot Commissioners from the consultant as part of an approved treatment program for impaired licensees is confidential and exempt. Except as otherwise provided in the section, all information obtained by the consultant and the Department of Business and Professional Regulation pursuant to this section is confidential and exempt.

**Section 311.13, F.S.** -- Seaport security plans created pursuant to s. 311.12 are exempt from public disclosure. Materials that depict critical seaport operating facilities are also exempt if the seaport reasonably determines that such items contain information that is not generally known and that could jeopardize seaport security. The exemption does not apply to information relating to real estate leases, layout plans, blueprints, and information related thereto.

**Section 315.18, F.S.** -- Any proposal or counterproposal exchanged between a deepwater port listed in s. 311.09(1) and any nongovernmental entity, relating to the sale, use or lease of land or of port facilities, and any financial records submitted by any nongovernmental entity to such a deepwater port for the purpose of the sale, use or lease of land or of port facilities, are confidential and exempt from disclosure until 30 days before such proposal or counterproposal is considered for approval by the governing body of the deepwater port. If no proposal or counterproposal is submitted to the governing body, the proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations.

**Section 316.066(5)(3)(a), F.S.** -- Except as otherwise provided in the exemption, crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from public disclosure requirements for a period of 60 days after the date the report is filed.

**Section 320.025(3), F.S.** -- All records relating to the registration application of a law enforcement agency, Attorney General's Medicaid Fraud Control Unit, or public defender's office for motor vehicle or vessel registration and license plates or decals issued under fictitious names, are exempt from s. 119.07(1) as long as the information is retained by the Department of Highway Safety and Motor Vehicles.



**Section 320.05(2), F.S.** -- Information on motor vehicle or vessel registration records of the Department of Highway Safety and Motor Vehicles shall not be made available to a person unless the person requesting the information furnishes positive proof of identification.

**Section 322.125(3) and (4), F.S.** -- When a member of the Medical Advisory Board acts directly as a consultant to the Department of Highway Safety and Motor Vehicles, a board member's individual review of the physical and mental qualifications of a licensed driver or applicant is exempt from s. 286.011. Reports received or made by the board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for confidential use of the board or department and may not be divulged to any person except to the driver or applicant or used as evidence in any trial except proceedings under s. 322.271 or s. 322.31.

**Section 322.126(3), F.S.** -- Disability reports are confidential and exempt from s. 119.07(1) and may be used solely for the purpose of determining the qualifications of any person to operate a motor vehicle.

**Section 322.142(4), F.S.** -- Reproductions of color photographic or digital imaged licenses shall be made and issued only for the purposes set forth in the subsection and are exempt from s. 119.07(1).

**Section 322.20(3), F.S.** -- The release by the Department of Highway Safety and Motor Vehicles of the driver history record, with respect to crashes involving a licensee, shall not include any notation or record of the occurrence of a motor vehicle crash unless the licensee received a traffic citation as a direct result of the crash, and to this extent such notation or record is exempt from s. 119.07(1).

**Section 322.20(9), F.S.** -- The Department of Highway Safety and Motor Vehicles shall furnish without charge specified driver license information from the Division of Driver Licenses to the courts for the purpose of jury selection or to any state agency, state attorney, sheriff or chief of police. Such court, state agency, state attorney, or law enforcement agency may not sell, give away, or allow the copying of such information. Noncompliance with this prohibition shall authorize the department to charge the noncomplying court, state agency, state attorney, or law enforcement agency the appropriate fee for any subsequent lists requested.

**Section 328.40(3), F.S.** -- All records kept or made by the Department of Highway Safety and Motor Vehicles under the vessel registration law are public records except for confidential reports.

**Section 331.22, F.S.** -- Airport security plans of an aviation authority or aviation department of a county or municipality which operates an international airport are exempt from disclosure. In addition, except as otherwise provided in the section, specified materials that depict critical airport operating facilities are exempt to the extent that the authority or department which operates an airport determines that such information is not generally known and could jeopardize the security of the airport.

**Section 331.326, F.S.** -- Information held by Space Florida which is a trade secret,

as defined in s. 812.081, including trade secrets of Space Florida, any spaceport user, or the space industry business is confidential and exempt from disclosure and may not be disclosed. Any meeting or portion of a meeting of Space Florida's board is exempt from open meetings requirements when the board is discussing trade secrets. Any public record generated during the closed portions of the meetings, such as notes, minutes, and tape recordings, is confidential and exempt from disclosure.

**Section 334.049(4), F.S.** -- Information obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture which is a trade secret as defined by s. 688.002, is confidential and exempt from s. 119.07(1).

**Section 337.14(1), F.S.** -- Financial information required by the Department of Transportation pursuant to this subsection shall be confidential and exempt from s. 119.07(1).

**Section 337.162, F.S.** -- Complaints submitted to the Department of Business and Professional Regulation and maintained by the Department of Transportation pursuant to this section relating to alleged violations of state professional licensing laws or rules shall be confidential and exempt from s. 119.07(1). Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt pursuant to Ch. 455 and applicable state law.

**Section 337.168, F.S.** -- The Department of Transportation's official project cost estimates and potential bidders' identities are confidential and exempt from s. 119.07 for a limited period of time as prescribed therein. The department's bid analysis and monitoring system is confidential and exempt from s. 119.07(1).

**Section 338.155(6), F.S.** -- Personal identifying information that is in the possession of the Department of Transportation, a county, or an expressway authority that relates to payment of tolls by credit card, charge card, or check is exempt from s. 119.07(1).

**Section 339.0805(1)(c), F.S.** -- The application and financial information required for certification by the Department of Transportation as a socially and economically disadvantaged business enterprise are confidential and exempt from s. 119.07(1).

**Section 341.3026, F.S.** -- Personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card or similar device is exempt from disclosure.

**Section 350.121, F.S.** -- Any records obtained by the Public Service Commission pursuant to an inquiry are confidential and exempt from s. 119.07(1) while such inquiry is pending. If, at the conclusion of an inquiry the commission undertakes a formal proceeding, any matter determined by the commission or by a court or administrative agency to be trade secrets or confidential proprietary business information coming into its possession pursuant to such inquiry shall be confidential and exempt.

**Section 364.107, F.S.** -- Personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10 held by the Public

Service Commission is confidential and exempt except as provided therein.

**Section 364.183, F.S.** -- Records provided by a telecommunications company to the Public Service Commission which are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

**Section 365.171(12), F.S.** -- Any record, recording, or information, or portions thereof, obtained by a public agency or public safety agency for the purpose of providing emergency services and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from public disclosure requirements except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number, or personal information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.

**Section 365.174, F.S.** -- Proprietary confidential business information, as defined in the exemption, that is submitted by a wireless 911 provider to the Wireless 911 Board or the State Technology Office is confidential and exempt from public disclosure requirements.

**Section 366.093, F.S.** -- Records provided by a public utility company to the Public Service Commission which, upon the request of the public utility or any person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

**Section 367.156, F.S.** -- Records provided by a water or wastewater utility to the Public Service Commission which, upon the request of the utility or any person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

**Section 368.108, F.S.** -- Records provided by a natural gas transmission company to the Public Service Commission which, upon the request of the company or any other person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

**Section 373.139(3)(a), F.S.** -- Appraisal reports, offers, and counteroffers for the acquisition of real property by water management districts created under Ch. 373 are confidential and exempt from s. 119.07(1) until an option contract is executed, or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. However, disclosure is authorized under some circumstances as described in the subsection. If negotiations are terminated by the district, the appraisal report, offers and counteroffers shall become available pursuant to s. 119.07(1).

**Section 373.69(8) and (9), F.S.** -- The mediator selected by parties to the

Apalachicola-Chattahoochee-Flint River Basin Compact shall not divulge confidential information disclosed to the mediator by the parties or by witnesses in the course of the mediation. All records received by a mediator while serving as mediator shall be considered confidential and each party to the mediation shall maintain the confidentiality of the information.

**Section 377.075(4)(f), F.S.** -- Company data collected by the State Geologist from specified agencies may be maintained as confidential subject to the same requirements as that required by the federal agency of jurisdiction or, if no specific language exists in federal law, the confidential period shall not exceed 10 years.

**Section 377.22(2)(h), F.S.** -- Information required by this paragraph relating to oil and gas resources, at the request of the operator, shall be exempt from s. 119.07(1) and held confidential by the Division of Resource Management of the Department of Environmental Protection for a period of 1 year after the completion of a well.

**Section 377.2408(3), F.S.** -- Any information relating to the location of the geophysical operation and other information relating to leasing plans, exploration budgets, and other proprietary information that could provide an economic advantage to competitors shall be kept confidential by the Department of Environmental Protection for 10 years and exempt from s. 119.07(1), and shall not be released to the public without the consent of the person submitting the application to conduct geophysical operations.

**Section 377.2409, F.S.** -- Information on geophysical activities conducted on state-owned mineral lands received by the Division of Resource Management of the Department of Environmental Protection pursuant to this section shall, upon the request of the person conducting the activities, be held confidential for 10 years and shall be exempt from disclosure.

**Section 377.2421(2), F.S.** -- Geologic data which is maintained by the Division of Resource Management of the Department of Environmental Protection pursuant to this section shall be subject to the same confidentiality requirements that are required by the federal agency and are exempt from s. 119.07(1) to the extent necessary to meet federal requirements.

**Section 377.2424(3), F.S.** -- The Department of Environmental Protection shall share geophysical permit information with a county or municipality upon request and may, on its own initiative, share such information with a county or municipality. However, the county or municipality shall maintain the confidential status of such information, as required by s. 377.2408(3) and such information is exempt from s. 119.07(1).

**Section 377.606, F.S.** -- Proprietary information obtained by the Department of Community Affairs as the result of a required report, investigation, or verification relating to energy resources shall be confidential and exempt from s. 119.07(1) if disclosure would be likely to cause substantial harm to the competitive position of the person providing the information and the provider has requested confidentiality.

**Section 377.701(4), F.S.** -- No state employee may divulge or make known in any

manner any proprietary information under the Petroleum Allocation Act, if the disclosure of such information would be likely to cause substantial harm to the competitive position of the person providing such information and if the person requests that such information be held confidential, except in accordance with a court order, or in the publication of statistical information compiled by methods which would not disclose the identity of individual suppliers or companies. Such proprietary information is confidential and exempt from s. 119.07(1).

**Section 378.208(5), F.S.** -- The Department of Environmental Protection may adopt rules to require mine operators to submit a copy of their most recent annual financial statements. The financial statement, except for a financial statement that is a public record in the custody of another governmental agency, shall be confidential and exempt from s. 119.07, and the department shall ensure the confidentiality of such statements.

**Section 378.406(1)(a), F.S.** -- Any information relating to prospecting, rock grades, or secret processes or methods of operation which may be required, ascertained, or discovered by inspection or investigation shall be exempt from s. 119.07(1) if the applicant requests the Department of Environmental Protection to keep such information confidential and informs the department of the basis for such confidentiality. Should the secretary determine that such information shall not be confidential, the secretary shall provide notice of his or her intent to release the information.

**Section 379.223(3), F.S.** -- The identity and all information identifying a donor or prospective donor to a citizen support organization established by the Fish and Wildlife Conservation Commission who desires to remain anonymous is confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report of the citizen support organization.

**Section 379.3511(3), F.S.** -- All social security numbers that are provided pursuant to cited statutes and are contained in records of any subagent for the sale of fishing, hunting and trapping licenses under this section are confidential as provided in those statutes.

**Section 379.352(3), F.S.** -- Disclosure of a license applicant's social security number which is obtained by the Fish and Wildlife Conservation Commission as required by statute is limited to child support enforcement purposes and use by the commission, and as otherwise provided by law.

**Section 379.362(6), F.S.** -- Except as provided in the exemption, reports required of wholesale dealers regarding saltwater products are confidential and exempt from s. 119.07(1).

**Section 381.0031(4), F.S.** -- Information submitted in reports of diseases of public health significance to the Department of Health as required by this section is confidential and exempt from s. 119.07(1), and shall be open only when necessary to public health.

**Section 381.004(3), (4), (5), and (6), F.S.** -- Except as otherwise provided, human immunodeficiency virus test results, and the identity of any person upon whom a test

has been performed, are confidential and exempt from s. 119.07(1). No person to whom the results of a test have been disclosed pursuant to this section may disclose the results to another person except as authorized in the section. Such confidential information is exempt from s. 119.07(1).

**Section 381.0041(9), F.S.** -- All blood banks shall be governed by the provisions of s. 381.004(3) relating to confidentiality of HIV test results and the identity of test subjects.

**Section 381.0055(1) and (2), F.S.** -- Information which is confidential by operation of law and which is obtained by the Department of Health and the health agencies specified in this section relating to quality assurance activities shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or health care provider from the department or health agencies pursuant to this section shall retain its confidential status and be exempt from s. 119.07(1).

**Section 381.0055(3), F.S.** -- Portions of meetings, proceedings, reports and records of the Department of Health and the health agencies set forth in this section, which relate solely to patient care quality assurance and where specific persons or incidents are discussed are confidential and exempt from s. 286.011, and are confidential and exempt from s. 119.07(1).

**Section 381.0056(5)(a)16., F.S.** -- Provisions in the school health services plan developed pursuant to this section for maintenance of health records of individual students must be in accordance with s. 1002.22, relating to confidentiality of student records.

**Section 381.775, F.S.** -- Except as provided in the exemption, all oral and written records, information, letters, and reports received, made, or maintained by the Department of Health relative to any applicant for or recipient of services under the brain and spinal cord injury program are privileged, confidential, and exempt from s. 119.07(1). The in camera proceeding before designated officials to determine whether records are relevant to an inquiry and should be released and all records relating thereto are confidential and exempt from s. 119.07(1).

**Section 381.83, F.S.** -- Trade secrets as defined in s. 812.081(1)(c) obtained by the Department of Health pursuant to Ch. 381 relating to public health are confidential and exempt from disclosure except as provided in the section. The person submitting such trade secret information must request that it be kept confidential and inform the department of the basis for the claim of trade secret. The department shall determine whether the information, or portions thereof, is a trade secret.

**Section 381.8531, F.S.** -- The following information held by the Florida Center for Brain Tumor Research is confidential and exempt from disclosure requirements: An individual's medical record and any information received from an individual from another state or nation or the federal government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

**Section 381.95(1), F.S.** -- Information identifying or describing the name, location,

pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the state's plan of defense against terrorism is exempt from public disclosure requirements.

**Section 382.008(6), F.S.** -- All information relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records are confidential and exempt from s. 119.07(1), except for health research purposes approved by the Department of Health, nor shall copies of same be provided except as provided in s. 382.025.

**Section 382.013(4), F.S.** -- In the event that a child of undetermined parentage is later identified and a new certificate of birth is prepared, the original birth certificate shall be sealed and filed, shall be confidential and exempt, and shall not be opened to inspection except by, nor shall certified copies of the same be issued except by court order to, any person other than the registrant if of legal age.

**Section 382.013(5), F.S.** -- The original birth certificate shall contain all information required by the Department of Health for legal, social, and health research purposes. However, information concerning parentage, marital status, and medical details shall be confidential and exempt, except for health research purposes as approved by the department, nor shall copies be issued except as provided by s. 382.025.

**Section 382.017(1), F.S.** -- After registering a certificate of foreign birth in the new name of an adoptee, the Department of Health shall place the adoption report or decree under seal, not to be broken except pursuant to court order.

**Section 382.025(1), F.S.** -- Except for birth records over 100 years old which are not under seal pursuant to court order, all birth records of this state are confidential and exempt from s. 119.07(1). Certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from s. 119.07(1) and shall be issued only as authorized by the Department of Health to those individuals and entities listed in the subsection.

**Section 382.025(2), F.S.** -- A certification of the death or fetal death certificate which includes the confidential portions, shall be issued by the Department of Health only to the individuals and entities specified in the subsection. All portions of a death certificate shall cease to be exempt 50 years after the death.

**Section 382.025(3), F.S.** -- Records or data issued by the Department of Health to government and research entities as set forth in this subsection are exempt from s. 119.07(1) and copies of records or data issued pursuant to this subsection remain the property of the department.

**Section 382.025(4), F.S.** -- Except as provided in this section, preparing or issuing certificates of live birth, death, or fetal death is exempt from the provisions of s. 119.07(1), F.S.

**Section 383.14(3)(d), F.S.** -- The confidential registry of cases maintained by the

Department of Health pursuant to this section [relating to phenylketonuria and other metabolic, hereditary and congenital disorders] shall be exempt from s. 119.07(1).

**Section 383.32(3), F.S.** -- Birth center clinical records are confidential and exempt from s. 119.07(1). A client's clinical records shall be open to inspection only if the client has signed a consent to release information or the review is made for a licensure survey or complaint investigation.

**Section 383.325, F.S.** -- Inspection reports of birth centers which have been filed with or issued by any governmental agency are to be maintained as public information. However, any record which, by state or federal law or regulation, is deemed confidential shall be exempt from s. 119.07(1) and shall not be distributed or made available as public information unless or until such confidential status expires, except as provided in s. 383.32(2)(c) requiring records to be made available for audit by licensure personnel.

**Section 383.412, F.S.** -- Information that reveals the identity of the deceased child's surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by, and which is held by, the State Child Abuse Death Review Committee or local committee, as defined therein, is confidential and exempt. Portions of committee meetings at which information made confidential and exempt pursuant to subsection (2) are discussed are exempt from open meetings requirements. The closed portion of the meeting must be recorded; however, the recording is exempt from disclosure.

**Section 383.51, F.S.** -- The identity of parents who leave a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, is confidential and exempt from public disclosure requirements.

**Section 384.26(2), F.S.** -- All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of sexually transmissible disease infection shall be considered confidential and exempt from s. 119.07(1), and subject to the provisions of s. 384.29.

**Section 384.282(3), F.S.** -- Except as provided in this section, the name of any person subject to proceedings initiated by the Department of Health relating to a public health threat resulting from a sexually transmissible disease, shall be confidential and exempt from s. 119.07(1).

**Section 384.287(6), F.S.** -- An authorized person who receives the results of a test for sexually transmissible disease pursuant to this section, which results disclose human immunodeficiency virus infection and are otherwise confidential pursuant to law, shall maintain the confidentiality of the information received and the identity of the person tested as required by s. 381.004.

**Section 384.29, F.S.** -- All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of sexually transmissible diseases are confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as provided in the section. Except as provided in the



section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

**Section 384.30(2), F.S.** -- The fact of consultation, examination, and treatment of a minor for a sexually transmissible disease is confidential and exempt from s. 119.07(1) and shall not be divulged directly or indirectly, such as sending a bill for services rendered to a parent or guardian, except as provided in s. 384.29.

**Section 385.202(3), F.S.** -- Information which discloses or could lead to the disclosure of the identity of any person whose condition or treatment has been reported and studied pursuant to this section relating to the statewide cancer registry shall be confidential and exempt from s. 119.07(1) except as provided in the subsection.

**Section 390.01114(4)(e), F.S.**-- A court that conducts proceedings for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy shall order that a confidential record be maintained. All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule.

**Section 390.01116, F.S.** -- Any information that can be used to identify a minor petitioning a circuit court for a judicial waiver, as provided in s. 390.01114, of the notice requirements under the Parental Notice of Abortion Act if held by a circuit court or an appellate court or the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

**Section 390.0112(3), F.S.** -- Reports concerning pregnancy termination which are submitted to the Agency for Health Care Administration pursuant to this section shall be confidential and exempt and shall not be revealed except upon court order in a civil or criminal proceeding.

**Section 392.54(2), F.S.** -- All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of tuberculosis exposure or infection shall be confidential, subject to the provisions of s. 392.65. Such information is exempt from s. 119.07(1).

**Section 392.545(3), F.S.** -- The name of any person subject to proceedings initiated by the Department of Health relating to a public health threat from tuberculosis shall not be revealed by the department, its authorized representatives, the courts, and other parties to the lawsuit except as permitted in s. 392.65.

**Section 392.65, F.S.** -- All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis shall be strictly confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as authorized in the subsection. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

**Section 393.0674, F.S.** -- It is a third degree felony for any person to willfully, knowingly, or intentionally release information from the juvenile records, and a first

degree misdemeanor for any person to willfully, knowingly, or intentionally release information from the criminal records or central abuse registry, of a person obtained under s. 393.0655, s. 393.066, or s. 393.067 to any other person for any purpose other than screening for employment as specified in those sections.

**Section 393.13(4)(i)1., F.S.** -- Central client records of persons with developmental disabilities are confidential and exempt from s. 119.07(1) and no part of such records shall be released except as authorized in this paragraph.

**Section 394.4615(1) and (7), F.S.** -- Clinical records of persons subject to "The Baker Act" are confidential and exempt from s. 119.07(1). Such records may be released only under the circumstances specified in the statute. Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt.

**Section 394.467(6)(a)2., F.S.** -- The independent expert's report which is submitted at a hearing on involuntary inpatient placement is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing.

**Section 394.907(7), F.S.** -- Records of quality assurance programs of community mental health centers which relate solely to actions taken in carrying out the provisions of this section and records obtained by the Department of Children and Family Services to determine licensee compliance with this section are confidential and exempt from s. 119.07(1). Meetings or portions of meetings of quality assurance program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

**Section 395.0162(2), F.S.** -- Any records, reports or documents which are confidential and exempt from s. 119.07(1), shall not be distributed or made available for purposes of compliance with this section (relating to inspection reports of licensed facilities) unless or until such confidential status expires.

**Section 395.0193(4), F.S.** -- Reports of final disciplinary actions taken by the governing board of a licensed facility pursuant to s. 395.0193(3) which have been forwarded to the Division of Health Quality Assurance of the Agency for Health Care Administration pursuant to this subsection are not subject to inspection under the provisions of s. 119.07(1), even if the division's investigation results in a finding of probable cause.

**Section 395.0193(7), F.S.** -- The proceedings and records of peer review panels, committees, or governing boards of licensed facilities (*i.e.*, a hospital or surgical facility licensed in accordance with Ch. 395) which relate solely to actions taken in carrying out this section (*i.e.*, disciplinary proceedings against staff) are not subject to inspection under s. 119.07(1) and meetings held to achieve the objectives of such panels, committees or governing boards are not open to the public under Ch. 286.

**Section 395.0197(6)(c), F.S.** -- The annual report submitted by a facility licensed under Ch. 395 (hospitals and surgical facilities) to the Agency for Health Care Administration concerning information on incidents as provided in this section is confidential and is not available to the public pursuant to s. 119.07(1) or any other law

providing access to public records.

**Section 395.0197(7), F.S.** -- An adverse incident report submitted by a facility licensed under Ch. 395 to the Agency for Health Care Administration pursuant to this subsection shall not be available to the public pursuant to s. 119.07(1) or any other law providing access to public records, except as authorized therein.

**Section 395.0197(13), F.S.** -- Records of licensed facilities which are obtained by the Agency for Health Care Administration under cited subsections in order to carry out the provisions of this section relating to incidents and injuries are not available to the public under s. 119.07(1), nor shall they be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agencies set forth in the subsection.

**Section 395.0197(14), F.S.** -- The meetings of the committees and governing board of a facility licensed under this chapter (hospitals and surgical facilities) held solely for the purpose of achieving the objectives of risk management as provided by this section shall not be open to the public under Ch. 286. The records of such meetings are confidential and exempt from s. 119.07(1), except as provided in subsection (13).

**Section 395.1025, F.S.** -- Notification to an emergency medical technician, paramedic or other person that a patient they treated or transported has an infectious disease shall be done in a manner to protect the confidentiality of such patient information and shall not include the patient's name.

**Section 395.1046(3), F.S.** -- A complaint against a hospital and all information obtained by the Agency for Health Care Administration during an investigation pursuant to this section are exempt from disclosure and may not be disclosed until 10 days after probable cause has been found by the agency or the subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. In cases where the agency finds the complaint is not legally sufficient or when the agency determines that no probable cause exists, all such records are confidential and exempt from disclosure; however, the complaint and a summary of the agency's findings shall be available although information identifying an individual shall not be disclosed.

**Section 395.1056, F.S.** -- Those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism held by specified agencies are confidential and exempt from disclosure requirements but may be disclosed to another agency for anti-terrorism efforts as set forth in the exemption. That portion of a public meeting which would reveal information contained in a comprehensive emergency management plan that addresses the response of a hospital to an act of terrorism is exempt from open meetings requirements.

**Section 395.3025(4), F.S.** -- Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative except that appropriate disclosure may be made as provided in the subsection.

**Section 395.3025(7)(a), F.S.** -- If the content of any patient treatment record is

provided under this section, the recipient, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not further disclose any information unless expressly permitted by written consent of the patient. The content of such patient records is confidential and exempt from disclosure.

**Section 395.3025(8), F.S.** -- Patient records at hospitals and surgical facilities are exempt from disclosure under s. 119.07(1), except as provided in subsections (1) through (5) of this section.

**Section 395.3025(9), F.S.** -- A facility licensed under Ch. 395 (hospitals and surgical facilities) may prescribe the content and custody of limited-access records which the facility may maintain on its employees. Such records are limited to information regarding evaluations of employee performance and shall be accessible only as provided in the subsection. Such limited-access employee records are exempt from s. 119.07(1) for a period of 5 years from the date such records are designated limited-access records.

**Section 395.3025(10) and (11), F.S.** -- Except as provided in the exemption, the home addresses, telephone numbers, and photographs of employees of any licensed hospital or surgical facility who provide direct patient care or security services, as well as specified information about the spouses and children of such employees, are confidential and exempt. The same information must also be held confidential by the facility upon written request by other employees who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family.

**Section 395.3035(2), F.S.** -- Certain public hospital records and information, as described in the subsection, are confidential and exempt from disclosure. For more information, please refer to the discussion on hospital records found in Part II. s. I. of this manual.

**Section 395.3035(3), F.S.** -- Those portions of a meeting of a public hospital's governing board, relating to contract negotiations as described in the subsection are exempt from the public meeting requirements; however, all governing board meetings at which the board is scheduled to vote on contracts, except managed care contracts, are open to the public. All portions of a board meeting closed to the public shall be subject to procedural requirements as set forth in the subsection.

**Section 395.3035(4), F.S.** -- Those portions of a meeting of a public hospital's governing board at which written strategic plans that are confidential pursuant to s. 395.3035(2), are discussed, reported on, modified, or approved by the governing board are exempt from open meetings requirements provided that certain procedural requirements as set forth in the subsection are complied with.

**Section 395.3035(5), F.S.** -- Any public records such as tapes, minutes, and notes, generated at a public hospital governing board meeting which is closed to the public pursuant to this section are confidential and exempt from disclosure. All such records shall be retained and shall cease to be exempt at the same time as the transcript of the

meeting becomes available to the public.

**Section 395.3036, F.S.** -- The records of a private corporation that leases a public hospital or other public health care facility are confidential and exempt from disclosure and the meetings of the governing board of a private corporation are exempt from open meetings requirements when the public lessor complies with the public finance accountability provisions of s. 155.40(5) with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least 3 of 5 criteria set forth in the exemption.

**Section 395.4025(12), F.S.** -- Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section (relating to trauma centers) or pursuant to other statutes cited in the subsection, must be held confidential by the Department of Health and are exempt from s. 119.07(1).

**Section 395.404(1)(b), F.S.** -- Trauma registry data obtained pursuant to this subsection are confidential and exempt from disclosure except as set forth in the statute.

**Section 395.51(1),(2), F.S.** -- Information which is confidential by operation of law and which is obtained by a trauma agency or committee assembled pursuant to s. 395.50, shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or emergency medical services provider from a trauma agency or committee shall retain its confidential status and be exempt from s. 119.07(1).

**Section 395.51(3), F.S.** -- Portions of meetings, proceedings, reports and records of a trauma agency or committee assembled pursuant to this chapter, which relate solely to patient care quality assurance are confidential and exempt from s. 286.011. Patient care quality assurance, for the purpose of this section, shall include consideration of specific persons, cases, incidents relevant to the performance of quality control and system evaluation.

**Section 397.419(5), F.S.** -- Records of substance abuse service providers which relate solely to actions taken in carrying out this section relating to quality improvement and records obtained by the Department of Children and Family Services to determine a provider's compliance with this section are confidential and exempt. Meetings or portions of meetings of quality improvement program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

**Section 397.461(3), F.S.** -- It is a first degree misdemeanor to willfully, knowingly, or intentionally release any criminal or juvenile information obtained under Ch. 397, "Substance Abuse Services," for any purpose other than background checks of personnel for employment.

**Section 397.501(7), F.S.** -- Records of substance abuse service providers pertaining to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with Ch. 397 and federal confidentiality

regulations, and are exempt from disclosure. Such records may not be disclosed without the individual's written consent except under circumstances specified in the subsection.

**Section 397.752, F.S.** -- An inmate's substance abuse service records are confidential in accordance with s. 397.501(7).

**Section 400.0077(1), F.S.** -- Except as otherwise provided in the subsection, the following records relating to long-term care ombudsman councils are confidential and exempt from s. 119.07(1): resident records held by an ombudsman or by the state or a local ombudsman council; the names or identities of complainants or residents involved in a complaint; and any other information about a complaint.

**Section 400.0077(2), F.S.** -- That portion of a long-term care ombudsman council meeting in which the council discusses information that is confidential and exempt from s. 119.07(1) is closed to the public and exempt from s. 286.011.

**Section 400.022(1)(m), F.S.** -- Personal and medical records of nursing home residents are confidential and exempt from s. 119.07(1).

**Section 400.0255(14), F.S.** -- Except as provided in this subsection, in any proceeding under this section (relating to hearings of facility decisions to transfer or discharge nursing home residents) the following information concerning the parties is confidential and exempt from disclosure: names and addresses, medical services provided, social and economic conditions, personal information evaluations, medical data, and information verifying income eligibility and amount of medical assistance payments.

**Section 400.119, F.S.** -- Records of meetings of the risk-management and quality assurance committee of a long-term care facility, as well as incident reports filed with the facility's risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse-incident reports from the facility are confidential and exempt. Meetings of an internal risk management and quality assurance committee are exempt from open meetings requirements and are not open to the public.

**Section 400.494(1), F.S.** -- Information about patients received by persons employed by, or providing services to, a home health agency or received by the licensing agency through reports or inspection is confidential and exempt from s. 119.07(1) and shall be disclosed only as authorized in the exemption.

**Section 400.611(3), F.S.** -- Patient records of hospice care are confidential and may not be released except as provided in the subsection. Information obtained from patient records by a state agency pursuant to its statutory authority to compile statistical data is confidential and exempt from s. 119.07(1).

**Section 400.945, F.S.** -- Medical and personal identifying information about patients of a home medical equipment provider which is received by the licensing agency through reports or inspection is confidential and exempt.

**Section 401.30(3), F.S.** -- Reports to the Department of Health from emergency

medical services licensed pursuant to Part III, Ch. 401, which cover statistical data are public records except that the names of patients and other patient identifying information contained in such reports are confidential and exempt from s. 119.07(1).

**Section 401.30(4), F.S.** -- Records of emergency calls which contain patient examination or treatment information are confidential and exempt from s. 119.07(1), and may not be disclosed except as provided in the subsection.

**Section 401.414(3), F.S.** -- A complaint concerning an alleged violation of Part III of Ch. 401, relating to emergency medical services, and all information obtained in the investigation by the Department of Health shall be confidential and exempt from s. 119.07(1) until 10 days after probable cause is found or the subject of the investigation waives confidentiality, whichever occurs first. However, the department is not prohibited from providing such information to a law enforcement or regulatory agency.

**Section 401.425(5), F.S.** -- The records obtained or produced by an emergency medical review committee providing quality assurance activities as described in subsections (1) through (4) of the section are exempt from disclosure and committee proceedings and meetings regarding quality assurance activities are exempt from open meetings requirements.

**Sections 402.165(8) and 402.166(8), F.S.** -- All information obtained or produced by the Florida Statewide Advocacy Council or by a local advocacy council that is made confidential by law, that relates to the identity of a client subject to the protections of this section, or that relates to the identity of an individual providing information to the council about abuse or alleged violations of rights, is confidential and exempt from disclosure. Portions of meetings before such councils relating to the identity of such individuals or where testimony is provided relating to records otherwise made confidential by law are not subject to open meetings requirements. All records prepared by council members which reflect a mental impression, investigative strategy, or theory are exempt from s. 119.07(1) until completion of the investigation or the investigation ceases to be active as defined in the section.

**Section 402.22(3), F.S.** -- Statutory confidentiality requirements apply to information used by interdisciplinary teams involved in decisions regarding the design and delivery of specified services to students residing in residential care facilities operated by the Department of Children and Family Services and the Agency for Persons with Disabilities, and such information is exempt from ss. 119.07(1) and 286.011.

**Section 402.308(3)(a), F.S.** -- Disclosure of the social security number submitted by an applicant for a child care facility license issued by the Department of Children and Family Services shall be limited to child support enforcement purposes.

**Section 403.067(7)(c)5., F.S.** -- Agricultural records relating to production methods, profits, or financial information held by the Department of Agriculture and Consumer Services in connection with its duties relating to water pollution reduction are confidential and exempt from disclosure requirements.

**Section 403.074(3), F.S.** -- Proprietary information obtained by the Department of

Environmental Protection during a visit to provide onsite technical assistance pursuant to the Pollution Prevention Act shall be treated in accordance with s. 403.111, unless such confidentiality is waived by the party who requested assistance.

**Section 403.111, F.S.** -- Except as otherwise provided in this section, upon a determination of confidentiality by the Department of Environmental Protection in accordance with the standard and procedures established in subsection (1), specified manufacturing or financial information which is obtained through inspection or investigation by the department shall be exempt from s. 119.07(1), shall not be disclosed in public hearings, and shall be kept confidential by the department.

**Section 403.7046(2)and (3)(b), F.S.** -- Information reported to the Department of Environmental Protection or to a local government by a recovered materials dealer pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from disclosure.

**Section 403.73, F.S.** -- Trade secrets as defined in s. 812.081(1)(c) contained in records, reports, or information obtained from any person under the Florida Resource Recovery and Management Act which have been determined by the Department of Environmental Protection, in accordance with the procedures set forth in this section, to constitute trade secrets, are confidential and exempt from s. 119.07(1) except as provided in the section.

**Section 405.02, F.S.** -- Research groups, governmental health agencies, medical societies and in-hospital medical staff committees may use or publish released information only for the purpose of advancing medical research or education.

**Section 405.03, F.S.** -- The identity of any person treated or studied as provided in this chapter (relating to medical information available for research) shall be confidential and exempt from s. 119.07(1).

**Section 406.075(3)(b), F.S.** -- All proceedings and findings of the probable cause panel investigating a medical examiner are exempt from s. 286.011 until probable cause has been found or the subject of the investigation waives confidentiality. The complaint, investigative findings, and recommendations of the probable cause panel are exempt from s. 119.07(1) until 10 days after probable cause has been found or until the subject has waived confidentiality. The commission may provide such information at any time to any law enforcement or regulatory agency.

**Section 406.135, F.S.** -- Except as provided in the exemption, autopsy photographs and video and audio recordings of an autopsy held by the medical examiner are confidential and exempt from public disclosure requirements.

**Section 408.061(1)(d), F.S.** -- Specific provider contract reimbursement data which are obtained by the Agency for Health Care Administration from health care facilities, health care providers, or health insurers as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from disclosure.



**Section 408.061(7), F.S.** -- Portions of patient records obtained or generated by the Agency for Health Care Administration which contain identifying information of any person or the spouse, relative, or guardian of such person or any other identifying information which is patient-specific or otherwise identifies the patient, either directly or indirectly, are confidential and exempt from disclosure.

**Section 408.061(8), F.S.** -- The identity of any health care provider, health care facility, or health care insurer who submits proprietary business information, as defined in the section, to the Agency for Health Care Administration is confidential and exempt from disclosure except as provided in the subsection.

**Section 408.061(10), F.S.** -- Confidential health care information may be released to other governmental entities or to parties contracting with the Agency for Health Care Administration; however, the receiving entity shall retain the confidentiality of such information as provided in this section.

**Section 408.185, F.S.** -- Trade secrets and other confidential proprietary business information submitted by a member of the health care community to the Office of the Attorney General pursuant to a request for an antitrust no-action letter is confidential and exempt from disclosure for one year after the date of submission.

**Section 408.7056(14), F.S.** -- Any information that identifies a subscriber which is held by the subscriber assistance panel, Agency for Health Care Administration, or the Department of Financial Services pursuant to this section is confidential and exempt from disclosure. Meetings of the panel shall be open to the public unless the provider or subscriber whose grievance will be heard requests a closed meeting or the agency or the department determines that information which discloses the subscriber's medical treatment or history or information relating to internal risk management programs may be revealed at the panel meeting, in which case that portion of the meeting shall be exempt from open meetings requirements. All closed meetings shall be recorded by a certified court reporter.

**Section 409.175(12), F.S.** -- It is unlawful for any person, agency, summer day camp, or summer 24-hour camp providing care for children to release information from the criminal or juvenile records obtained under this section to any other person for any purpose other than screening for employment as specified in this section.

**Section 409.175(16), F.S.** -- Specified personal information about foster parent applicants, licensed foster parents, and the families of foster parent applicants and licensees, held by the Department of Children and Family Services is exempt from disclosure unless otherwise provided by a court or as provided in the exemption. The name, address, and telephone number of persons providing character or neighbor references are exempt.

**Section 409.176(12), F.S.** -- It is unlawful for any person or facility to release information from the criminal or juvenile records obtained under Ch. 435, s. 409.175 or this section (relating to registration of residential child-caring agencies) for any purpose other than screening for employment as specified in those statutes.

**Section 409.25661, F.S.** -- Information obtained by the Department of Revenue under an insurance claims data exchange system is confidential and exempt until such time as the department determines whether a match exists. If a match exists, such information becomes available for public disclosure. If a match does not exist, the nonmatch information shall be destroyed as provided in s. 409.25659, F.S.

**Section 409.2577, F.S.** -- Information gathered or used by the parent locator service is confidential and exempt from s. 119.07(1) and such information may be made available only to the persons and agencies and for the purposes listed in the section.

**Section 409.2579, F.S.** -- Information concerning applicants for or recipients of Title IV-D child support services is confidential and exempt from s. 119.07(1). The use or disclosure of such information by the IV-D program is limited to the purposes, and subject to the limitations, set forth in the section.

**Section 409.441(4), F.S.** -- All information about clients which is part of a runaway youth center's intake and client records system is confidential and exempt from s. 119.07(1).

**Section 409.821, F.S.** -- Information identifying a Florida Kidcare applicant or enrollee held by specified agencies is confidential and exempt, and may be disclosed only as authorized in the exemption.

**Section 409.910(17)(d), F.S.** -- All information obtained and documents prepared pursuant to an investigation of a Medicaid recipient, the recipient's legal representative, or any other person relating to an allegation of recipient fraud or theft is confidential and exempt from s. 119.07(1): until such time as the Agency for Health Care Administration takes final agency action; until the case is referred for criminal prosecution; until an indictment or information is filed in a criminal case; or at all times if otherwise protected by law.

**Section 409.910(20)(a), F.S.** -- All information obtained from the Office of Insurance Regulation of the Financial Services Commission relative to certain items of medical care and services furnished to eligible persons provided health services under this section shall be confidential and exempt from s. 119.07(1), except as provided therein.

**Section 409.91196(1) and (2), F.S.** -- The rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebate, and other trade secrets that the Agency for Health Care Administration has identified for use in negotiations, held by the agency under s. 409.912(39)(a)7., are confidential and exempt from public disclosure requirements. That portion of a meeting of the Medicaid Pharmaceutical and Therapeutics Committee at which this information is discussed is exempt from public meetings requirements. A record of an exempt portion of a meeting must be made and maintained.

**Section 409.913(12), F.S.** -- The complaint and all information obtained pursuant to an investigation of a Medicaid provider, or the authorized representative of a provider, relating to an allegation of fraud, abuse, or neglect are confidential and exempt from s. 119.07(1) until such time as the Agency for Health Care Administration takes final

agency action; until the Attorney General refers the case for criminal prosecution; until 10 days after the complaint is determined to be without merit; or at all times if otherwise protected by law.

**Section 409.920(9)(f), F.S.** -- Pursuant to the conduct of the statewide program of Medicaid fraud control, the Attorney General shall safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records beyond the scope of a specific investigation of fraud or abuse without the patient's written consent.

**Section 410.037, F.S.** -- Information about disabled adults receiving services under ss. 410.031-410.036 (relating to home care of disabled adults) which is received by the Department of Children and Family Services or its authorized employees, or by persons who provide services to disabled adults or elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner that identifies a disabled adult without the written consent of the person or his or her legal guardian.

**Section 410.605, F.S.** -- Information about disabled adults receiving services under the Community Care for Disabled Adults Act which is received by the Department of Children and Family Services or its authorized employees, or by persons who provide services to disabled adults as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner which would identify a disabled adult without the written consent of such person or the disabled adult's legal guardian.

**Section 411.011, F.S.** -- Individual records of children enrolled in school readiness programs, held by an early learning coalition or the Agency for Workforce Innovation, are confidential and exempt from public disclosure. The child's parent or guardian and other entities as set forth in the exemption are authorized to have access to the records.

**Section 413.012(1), F.S.** -- All records furnished to the Division of Blind Services in connection with state or local vocational rehabilitation programs and containing information as to personal facts about applicants or clients given to the state or local vocational rehabilitation agency, its representatives or its employees in the course of the administration of the program including lists of names, addresses and records of client evaluations are confidential and exempt from s. 119.07(1).

**Section 413.341, F.S.** -- Oral and written records, information, letters and reports received, made, or maintained by the Division of Vocational Rehabilitation of the Department of Education relative to any applicant or eligible individual are privileged, confidential, and exempt from s. 119.07(1), and may not be released except as provided in the section. Records that come into the possession of the division and that are confidential by other provisions of law are confidential and exempt from the provisions of s. 119.07(1), and may not be released by the division, except as provided in this section.

**Section 413.405(11), F.S.** -- Meetings, hearings, and forums of the Florida Rehabilitation Council established to assist the Division of Vocational Rehabilitation in

the planning and development of statewide rehabilitation programs and services shall be open and accessible to the public unless there is a valid reason for an executive session.

**Section 413.615(7)(a) and (b), F.S.** -- The identity of, and all information identifying, a donor or prospective donor to the Florida Endowment Foundation for Vocational Rehabilitation who desires to remain anonymous is confidential and exempt from disclosure. Portions of the meetings of the foundation during which the identity of donors or prospective donors is discussed are exempt from open meetings requirements. Records relating to clients or applicants to the Division of Vocational Rehabilitation that come into the possession of the foundation and that are confidential by other provisions of law are confidential and exempt from disclosure, and may not be released by the foundation. Portions of meetings of the foundation during which the identities of such clients or applicants are discussed are exempt from open meetings requirements.

**Section 413.615(11), F.S.** -- The identities of donors and prospective donors to the Florida Endowment for Vocational Rehabilitation who desire to remain anonymous shall be protected and the anonymity shall be maintained in the auditor's report.

**Section 414.106, F.S.** -- That portion of a meeting held by the Department of Children and Family Services, Workforce Florida, Inc., a regional workforce board, or a local committee at which personal identifying information contained in records relating to temporary cash assistance is discussed is exempt from open meetings requirements, if the information identifies a participant, a participant's family or household member.

**Section 414.295(1), F.S.** -- Except as provided in the exemption, personal identifying information of a temporary cash assistance program participant, a participant's family or a participant's family or household member, except for information identifying a noncustodial parent, held by the agencies set forth in the exemption, is confidential and exempt from public disclosure requirements.

**Section 415.1045(1)(a), F.S.** -- All photographs and videotapes taken during the course of a protective investigation of alleged abuse or neglect of a vulnerable adult are confidential and exempt from public disclosure as provided in s. 415.107.

**Section 415.107(1), F.S.** -- All records concerning reports of abuse, neglect or exploitation of a vulnerable adult, including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and may not be disclosed except as authorized in ss. 415.101-415.113.

**Section 415.107(3)(I), F.S.** -- Access to records concerning reports of abuse, neglect or exploitation of a vulnerable adult shall be granted to any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

**Section 415.107(6), F.S.** -- The identity of any person reporting adult abuse, neglect

or exploitation may not be released without that person's written consent to any person except as authorized in the subsection. This subsection grants protection only for the person who reports adult abuse, neglect or exploitation and protects only the fact that the person is the reporter.

**Section 415.111(2), F.S.** -- A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult except as provided in ss. 415.101-415.113 commits a second degree misdemeanor.

**Section 427.705(6), F.S.** -- The names, addresses, and telephone numbers provided to the Public Service Commission or administrator of the telecommunications access system established for the hearing impaired and speech impaired populations, by applicants for specialized telecommunications devices are confidential and exempt from s. 119.07(1). The information may be released to contractors only for the purposes set forth in the subsection.

**Section 430.105, F.S.** -- Personal identifying information in a record held by the Department of Elderly Affairs that relates to an individual's health or eligibility for or receipt of health-related, elder care, or long-term care services is confidential and exempt from public disclosure requirements. Such information may be disclosed to another governmental entity for the purpose of administering the department's programs for the elderly or if the affected individual or his or her legal representative provides written consent.

**Section 430.207, F.S.** -- Information about functionally impaired elderly persons receiving services under the Community Care for the Elderly Act which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to functionally impaired elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

**Section 430.504, F.S.** -- Information about clients of programs created or funded under s. 430.501 or s. 430.503 (relating to Alzheimer's Disease) which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to clients of programs created or funded under these sections as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

**Section 430.608, F.S.** -- Identifying information about elderly persons receiving services under ss. 430.601-430.606 which is collected and held by the Department of Elderly Affairs or its employees, by volunteers, or by persons who provide services to elderly persons under ss. 430.601-430.606 through contracts with the department, is confidential and exempt from disclosure.

**Section 435.09, F.S.** -- No criminal or juvenile information obtained under this section may be used for any other purpose than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal and juvenile records obtained by the department or employer are

exempt from s. 119.07(1).

**Section 440.102(8), F.S.** -- Except as provided in this subsection, all information, interviews, reports, statements, memoranda, and drug test results received or produced as a result of a drug-testing program are confidential and exempt from disclosure, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings except in accordance with this section or in determining compensability under the workers' compensation law.

**Section 440.108 F.S.** -- All investigatory records made or received pursuant to s. 440.107, [relating to enforcement of employer compliance with workers' compensation coverage requirements], and any records necessary to complete an investigation held by the Department of Financial Services are confidential and exempt until the investigation is completed or ceases to be "active" as defined in the exemption. After the investigation is completed or ceases to be active, information in the records remains confidential and exempt if it would jeopardize the integrity of another active investigation; reveal a trade secret, business or personal financial information or personal identifying information regarding the identity of a confidential informant; defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.

**Section 440.125, F.S.** -- Medical records and reports of an injured employee and any information identifying an injured employee in medical bills provided to the Department of Financial Services pursuant to s. 440.13, are confidential and exempt, except as otherwise provided by this section and Ch. 440.

**Section 440.132, F.S.** -- Investigatory records of the Agency for Health Care Administration made or received pursuant to s. 440.134, and any examination records necessary to complete an investigation are confidential and exempt, until the investigation is completed or ceases to be "active," as that term is defined in the subsection, except that medical records which specifically identify patients must remain confidential and exempt.

**Section 440.25(3), F.S.** -- Information from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, relating to a mediation conference under the Workers' Compensation Law obtained by any person performing mediation duties is privileged and confidential and may not be disclosed without the written consent of all parties to the conference.

**Section 440.3851, F.S.** -- Except as provided in the exemption, claims files of the Florida Self-Insurers Guaranty Association, Incorporated, and medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant, are confidential and exempt. Portions of meetings of the Association at which such confidential records are discussed are exempt from open meetings requirements.

**Section 440.39(7), F.S.** -- Documents and inspection results produced pursuant to this subsection relating to investigation and prosecution of claims against third-party

tortfeasors, are confidential and exempt from s. 119.07(1).

**Section 440.515, F.S.** -- The Department of Financial Services shall maintain reports from self-insurers filed pursuant to former s. 440.51(6) as confidential and exempt from s. 119.07(1). The reports shall be released only as authorized in this section.

**Section 443.101(11)(c), F.S.** -- Disclosure of drug tests and other information pertaining to drug testing of individuals who receive compensation under this chapter (Unemployment Compensation) shall be governed by s. 443.1715.

**Section 443.1316(2)(b), F.S.** -- Provisions of ss. 213.053, 213.0532 and 213.0535 (which contain provisions for the confidentiality of records) apply to collection of unemployment contributions and reimbursements by the Department of Revenue unless prohibited by federal law.

**Section 443.171(5), F.S.** -- Information revealing the employing unit's or individual's identity obtained from the employing unit or from any individual through the administration of Chapter 443 is, except to the extent necessary for the proper presentation of a claim or upon written authorization of the claimant who has a workers' compensation claim pending, confidential and exempt from s. 119.07(1).

**Section 443.1715(1), F.S.** -- Except as provided in the subsection, information revealing an employing unit's or individual's identity obtained from an employing unit or any individual under the administration of Ch. 443 (Unemployment Compensation), is confidential and exempt from s. 119.07(1) and may be disclosed only as authorized in the subsection.

**Section 443.1715(3)(b), F.S.** -- Unless otherwise authorized by law, information described in the subsection and received by an employer through a drug-testing program, or obtained by a public employee under this chapter (Unemployment Compensation) is confidential and exempt until introduced into the public record under a hearing conducted under s. 443.151(4).

**Section 446.52, F.S.** -- Information about displaced homemakers receiving services under cited statutes which is received by the Department of Education or its authorized employees, or by persons who provide services to displaced homemakers as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

**Section 447.045, F.S.** -- Neither the Department of Business and Professional Regulation nor any investigator or employee of the department shall divulge the information obtained pursuant to the processing of applicant fingerprint cards and such information is confidential and exempt from s. 119.07(1).

**Section 447.205(10), F.S.** -- Deliberations of the Public Employees Relations Commission in any proceeding before it are exempt from s. 286.011 except any hearing held or oral argument heard by the commission pursuant to Ch. 120 or Ch. 447 shall be open to the public. All draft orders developed in preparation for or preliminary to the

issuance of a final written order are confidential and exempt from s. 119.07(1).

**Section 447.307(2), F.S.** -- The petitions and dated statements signed by employees regarding whether employees desire to be represented in a proposed bargaining unit are confidential and exempt from s. 119.07(1), except that an employee, employer, or employee organization shall be given an opportunity to verify and challenge signatures as provided in the subsection.

**Section 447.605(1), F.S.** -- All discussions between the chief executive officer of a public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from s. 286.011.

**Section 447.605(3), F.S.** -- All work products developed by the public employer in preparation for and during collective bargaining negotiations shall be confidential and exempt from s. 119.07(1).

**Section 455.213(9), F.S.** -- Disclosure of a license applicant's social security number obtained by the Department of Business and Professional Regulation pursuant to this section shall be limited to the purpose of administration of the child support enforcement program and use by the department, and as otherwise provided by law.

**Section 455.217(5), F.S.** -- Meetings and records of meetings of any member of the Department of Business and Professional Regulation or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07(1) and 286.011.

**Section 455.2235(3), F.S.** -- Information relating to the mediation of a case pursuant to this section shall be subject to the confidentiality provisions of s. 455.225.

**Section 455.225(2), F.S.** -- For cases dismissed prior to a finding of probable cause, the report submitted by the Department of Business and Professional Regulation regarding dismissal of a complaint which the department has previously determined to be legally sufficient is confidential and exempt from s. 119.07(1).

**Section 455.225(4), F.S.** -- All proceedings of a probable cause panel of a board within the Department of Business and Professional Regulation are exempt from s. 286.011 until 10 days after the panel finds probable cause or until the subject of the investigation waives confidentiality.

**Section 455.225(10), F.S.** -- The complaint and all information obtained pursuant to an investigation by the Department of Business and Professional Regulation are confidential and exempt from s. 119.07(1), until 10 days after probable cause has been found or until the regulated professional or subject of the investigation waives confidentiality, whichever is first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act.

**Section 455.229(1) and (2), F.S.** -- Information required by the Department of Business and Professional Regulation of an applicant is open to public inspection pursuant to s. 119.07, except financial information, medical information, school



transcripts, examination questions, answers, papers, grades and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except as provided in the subsection. Information supplied to the department which is exempt or confidential remains exempt or confidential while in the custody of the department. Examination questions and answers may be considered only in camera in any Ch. 120 administrative proceeding. Examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1) unless invalidated by the administrative law judge.

**Section 455.232(1), F.S.** -- No officer, employee or person under contract with the Department of Business and Professional Regulation or any board therein, or any subject of an investigation shall convey knowledge or information to any person not lawfully entitled to such information or knowledge about any meeting or public record, which at the time such knowledge or information is conveyed, is exempt from ss. 119.01, 119.07(1) or 286.011.

**Section 455.32(15), F.S.** -- The exemptions set forth in cited provisions of Ch. 455, relating to records of the Department of Business and Professional Regulation, also apply to records held by the corporation with which the department contracts pursuant to the Management Privatization Act.

**Section 456.013(12), F.S.** -- Disclosure of a license applicant's social security number which is obtained by the Department of Health pursuant to this section is limited to child support enforcement purposes.

**Section 456.014(1) and (2), F.S.** -- Information required by the Department of Health of an applicant is open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except as provided in the subsection. Examination questions and answers may be considered only in camera in any Ch. 120 administrative proceeding. Examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1) unless invalidated by the administrative law judge.

**Section 456.017(4), F.S.** -- Meetings of any member of the Department of Health or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are exempt from open meetings requirements and any public records such as tape recordings, minutes, or notes, generated during or as a result of such meetings are confidential and exempt from disclosure.

**Section 456.046, F.S.** -- A patient name or other information that identifies a patient which is in a record obtained by the Department of Health for the purpose of compiling a practitioner profile pursuant to s. 456.041 is confidential and exempt from disclosure.

**Section 456.051(1), F.S.** -- The report of a claim or action for damages for personal injury which is required to be filed with the Department of Health under cited statutes is public information except for the name of the claimant or injured person, which remains

confidential.

**Section 456.057(7)(a), F.S.** -- Except as otherwise provided in the exemption, patient records generated by health care practitioners may not be furnished to any person other than the patient, his or her legal representative or other health care practitioners and providers involved in the patient's care and treatment.

**Section 456.057(10), F.S.** -- All patient records obtained by the Department of Health and any other documents maintained by the department which identify the patient by name are confidential and exempt and shall be used solely for the purpose of the department and the appropriate board in disciplinary proceedings.

**Section 456.073(2), F.S.** -- For cases dismissed prior to a finding of probable cause, the report submitted by the Department of Health regarding dismissal of a complaint which the department has previously determined to be legally sufficient is confidential and exempt from s. 119.07(1).

**Section 456.073(4), F.S.** -- All proceedings of a probable cause panel of a board within the Department of Health are exempt from s. 286.011 until 10 days after the panel finds probable cause or until the subject of the investigation waives confidentiality.

**Section 456.073(9)(c), F.S.** -- The identity of the expert whose report supported the Department of Health's recommendation for closure of a complaint, which report is provided to the complainant in accordance with this paragraph, shall remain confidential.

**Section 456.073(10), F.S.** -- Except as provided in this subsection, a complaint and all information obtained pursuant to an investigation by the Department of Health is confidential and exempt from s. 119.07(1), until 10 days after probable cause has been found or until the regulated professional or subject of the investigation waives confidentiality, whichever is first.

**Section 456.076(3)(e), F.S.** -- Except as otherwise provided in the section, all information concerning a practitioner obtained from the consultant by the probable cause panel or the Department of Health as part of an approved treatment program for impaired practitioners shall remain confidential and exempt from s. 119.07(1).

**Section 456.076(5)(a), F.S.** -- Except as otherwise provided in the section, all information obtained by the consultant and the Department of Health from an approved treatment provider regarding a licensee's impairment and participation in the treatment program is confidential and exempt from s. 119.07(1).

**Section 456.078(4), F.S.** -- Information relating to the mediation of a case pursuant to this section shall be subject to the confidentiality provisions of s. 456.073.

**Section 456.082, F.S.** -- No officer, employee or person under contract with the Department of Health, or any subject of an investigation shall convey knowledge or information to any person not lawfully entitled to such information or knowledge about any meeting or public record, which at the time such knowledge or information is conveyed, is exempt from ss. 119.01, 119.07(1) or 286.011.

**Section 458.3193, F.S.** -- All personal identifying information contained in records provided by physicians licensed under chapter 458 or 459 in response to physician workforce surveys required as a condition of license renewal and held by the Department of Health is confidential and exempt, except as otherwise provided in the subsection. *NOTE:* Also published as s. 459.0083, F.S.

**Section 458.331(1)(s), F.S.** -- If the Department of Health files a petition for enforcement against a physician pursuant to this paragraph, the licensee shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. See *also* ss. 457.109(1)(o) (acupuncturist); 459.015(1)(w) (osteopathic physician); 464.018(1)(j) (nurse); 466.028(1)(s) (dentist), and 486.125(1)(a)1., F.S. (physical therapist).

**Section 458.337(3), F.S.** -- Records of a medical organization or hospital taking disciplinary action against a physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

**Section 458.339(3), F.S.** -- Medical reports pertaining to the mental and physical condition of physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

**Section 458.341, F.S.** -- Patient medical records obtained during a search of a physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

**Section 459.016(3), F.S.** -- Records of a medical organization taking disciplinary action against an osteopathic physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

**Section 459.017(3), F.S.** -- Medical reports pertaining to the mental and physical condition of osteopathic physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint issued.

**Section 459.018, F.S.** -- Patient medical records obtained during a search of an osteopathic physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

**Section 464.208, F.S.** -- Criminal records or juvenile records relating to vulnerable adults that are obtained by the Board of Nursing for purposes of determining whether a person meets the requirements of Part II of Ch. 464, relating to certified nursing assistants are confidential and exempt from s. 119.07(1).

**Section 465.017(2), F.S.** -- Except as permitted in the enumerated chapters, records maintained in a pharmacy relating to the filling of prescriptions and the dispensing of medicinal drugs shall not be furnished to persons other than the patient or

legal representative, or to the department or to the patient's spouse if the patient is incapacitated and has provided written authorization. Rules adopted by the Board of Pharmacy relative to disposal of records of prescription drugs shall be consistent with the duty to preserve the confidentiality of such records in accordance with applicable state and federal law.

**Section 466.022(3), F.S.** -- Peer review information regarding dentists obtained by the Department of Health as background information shall remain confidential and exempt from ss. 119.07(1) and 286.011 regardless of whether probable cause is found.

**Section 466.0275(2), F.S.** -- Medical reports pertaining to the mental and physical condition of dentists which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

**Section 466.041(3), F.S.** -- Any report of hepatitis B carrier status filed by a licensee or applicant in compliance with the requirements established by the Board of Dentistry shall be confidential and exempt from s. 119.07(1), except for the purpose of investigation or prosecution of an alleged violation of this chapter by the Department of Health.

**Section 471.038(7), F.S.** -- The exemptions set forth in ss. 455.217, 455.225, and 455.229, for records of the Department of Business and Professional Regulation apply to records created or maintained by the Florida Engineers Management Corporation, except as provided in the subsection.

**Section 472.0131(5), F.S.** -- Meetings and records of meetings of any member of the Department of Agriculture and Consumer Services or of the Board of Professional Surveyors and Mappers held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt; however, the exemption does not affect the right of a person to review an examination as provided in subsection (3).

**Section 472.0201(1) and (2), F.S.** -- All information required by the Department of Agriculture and Consumer Services of any applicant shall be a public record and open to public inspection except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt and shall not be discussed with or made accessible to anyone except as provided therein. Any information supplied to the department by any other agency which is exempt from Ch. 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department. Examination questions and answers provided by the department to an administrative law judge in an administrative hearing are confidential and exempt unless invalidated by the administrative law judge.

**Section 472.02011, F.S.** -- An officer, employee, or person under contract with the Department of Agriculture and Consumer Services or the Board of Professional Surveyors and Mappers, or any subject of an investigation may not convey knowledge or information to any person who is not lawfully entitled to such knowledge or

information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from disclosure.

**Section 472.033(2), (4), and (10), F.S.** -- For cases involving a complaint to the Department of Agriculture and Consumer Services that are dismissed before a finding of probable cause, the report of the department is confidential and exempt from s. 119.07(1). All proceedings of the probable cause panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. However, the exemption does not apply to actions against unlicensed persons pursuant to s. 472.036.

**Section 474.214(1)(h), F.S.** -- If the Department of Business and Professional Regulation files a petition for enforcement against a veterinarian pursuant to this paragraph, the licensee shall not be named or identified by initials in any other public court records and the enforcement proceedings shall be closed.

**Section 474.2185, F.S.** -- Medical reports pertaining to the mental and physical condition of veterinarians which are maintained by the Department of Business and Professional Regulation pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

**Section 481.205(3)(a), F.S.** -- Complaints and any information obtained pursuant to an investigation by the Board of Architecture and Interior Design are confidential and exempt from disclosure as provided in s. 455.225(2) and (10), F.S.

**Section 487.031(5), F.S.** -- Information relative to formulas of products acquired by the Department of Agriculture and Consumer Services pursuant to the registration of pesticides is confidential and exempt from s. 119.07(1).

**Section 487.041(6), F.S.** -- Confidential data received from the Department of Agriculture and Consumer Services by governmental agencies in providing review and comment to the department regarding pesticide registration shall be confidential and exempt from s. 119.07(1).

**Section 487.0615(2)(c), F.S.** -- Confidential data received by the Pesticide Review Council from the U.S. Environmental Protection Agency or the pesticide registrant shall be confidential and exempt from s. 119.07(1).

**Section 493.6121(5), F.S.** -- Criminal justice information submitted to the Department of Agriculture and Consumer Services pursuant to the department's prescribed duties relating to licensure of private investigative, private security, and repossession services, is confidential and exempt from s. 119.07(1).

**Section 493.6121(8), F.S.** -- An investigation conducted by the Department of Agriculture and Consumer Services pursuant to this chapter relating to private investigative, private security, and repossession services, is exempt from s. 119.07(1) until a probable cause determination has been made, the case is closed prior to a determination of probable cause, or the subject of the investigation waives confidentiality.

**Section 493.6122, F.S.** -- The residence telephone number and residence address of certain licensees maintained by the Department of Agriculture and Consumer Services is confidential and exempt from s. 119.07(1), except that this information may be provided to law enforcement agencies. When the residence telephone number or address is or appears to be the business telephone number or address, this information is public record.

**Section 494.00125(1), F.S.** -- Except as provided therein, information relating to an investigation by the Office of Financial Regulation pursuant to the Mortgage Brokerage and Mortgage Lending Act, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as defined in the subsection, unless disclosure would result in certain enumerated consequences. If the investigation could endanger the safety of employees or their families, specified information about such personnel and their families is confidential and exempt from s. 119.07(1).

**Section 494.00125(2), F.S.** -- All audited statements submitted pursuant to this act (relating to mortgage brokerage and lending) are confidential and exempt from s. 119.07(1), except that employees of the Office of Financial Regulation shall have access to such information in the administration and enforcement of the act and prosecution of violations.

**Section 494.00125(3), F.S.** -- Credit history information and credit scores held by the Office of Financial Regulation and related to licensing under ss. 494.001-494.0077 are confidential and exempt except as provided therein.

**Section 497.172(1), F.S.** -- Portions of meetings of the Board of Funeral, Cemetery, and Consumer Services at which licensure examination questions or answers are discussed are exempt from open meetings requirements; however, the closed meetings must be recorded. Such recordings are exempt from disclosure. Except as provided in the exemption, financial examination and inspection records are confidential and exempt until the examination or inspection is completed or ceases to be active. Information relating to an investigation of a violation is confidential and exempt until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made. Trade secrets are confidential and exempt.

**Section 497.172(2), F.S.** -- Meetings of the probable cause panel of the Board of Funeral, Cemetery, and Consumer Services, pursuant to s. 497.153 are exempt from open meeting requirements although such meetings must be recorded. Records of exempt meetings of the probable cause panel are exempt from disclosure requirements until 10 days after a determination regarding probable cause is made.

**Section 497.172(3) and (4), F.S.** -- Except as provided therein, information held by the Department of Financial Services pursuant to a financial examination or inspection under Ch. 497 are confidential and exempt until the examination or inspection is completed or ceases to be active. Information held by the department relating to an investigation of a violation of Ch. 497 is confidential and exempt until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made. Trade secrets are confidential and exempt.

**Section 499.051(7), F.S.** -- The complaint and all information obtained pursuant to an investigation by the Department of Health under the Florida Drug and Cosmetic Act are confidential and exempt from disclosure until the investigation and enforcement action are completed except for trade secret information as defined in s. 812.081(1)(c) which shall remain confidential and exempt from disclosure.

**Section 500.148(3), F.S.** -- Information deemed confidential under cited federal enactments and which is provided to the Department of Agriculture and Consumer Services during a joint food safety or food illness investigation, as a requirement for conducting a federal-state contract or partnership activity, or for regulatory review, is confidential and exempt and may not be disclosed except as provided in the exemption.

**Section 501.2065, F.S.** -- Criminal or civil intelligence, investigative information, or any other information held by any state or federal agency that is obtained by the Department of Legal Affairs in the course of an investigation under Part II of Ch. 501 and that is confidential or exempt from s. 119.07(1) retains its status as confidential or exempt from s. 119.07(1).

**Section 502.222, F.S.** -- Information in the records of the Department of Agriculture and Consumer Services which would reveal a trade secret of a dairy industry business is confidential and exempt from s. 119.07(1).

**Section 517.12(14), F.S.** -- Currency transaction reports filed with the Office of Financial Regulation by dealers, investment advisers, and branch offices pursuant to this subsection are confidential and exempt from s. 119.07(1) except as provided in the subsection.

**Section 517.2015 (securities), s. 517.2106 (examination techniques) and s. 520.9965 (retail installment sales), F.S.** -- Except as provided in the exemption, information relating to an investigation by the Office of Financial Regulation pursuant to the Florida Securities and Investor Protection Act, or pursuant to the retail installment sales laws, including a consumer complaint, is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as defined in the subsection, unless disclosure would result in any of the enumerated consequences. If the investigation could endanger the safety of employees or their families, specified information about such personnel and their families is confidential and exempt.

**Section 526.311(2), F.S.** -- Any records, documents, or other business material, regardless of form or characteristics, obtained by the Department of Agriculture and Consumer Services in an investigation of an alleged violation of the Motor Fuel Marketing Practices Act are confidential and exempt from disclosure, while the

investigation is pending. At the conclusion of the investigation, any matter determined by the department or by a state or federal judicial or administrative body to be a trade secret or proprietary confidential business information held by the department pursuant to such investigation shall be confidential and exempt from disclosure.

**Section 527.0201(8), F.S.** -- Liquefied petroleum gas competency examinations of the Department of Agriculture and Consumer Services are confidential and exempt.

**Section 527.062(1), F.S.** -- Information compiled by the Department of Agriculture and Consumer Services pursuant to an investigation of an accident involving liquefied petroleum gas or equipment is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as defined in the subsection.

**Section 539.003, F.S.** -- Except as provided in the subsection, records relating to pawnbroker transactions delivered to appropriate law enforcement officials are confidential and exempt.

**Section 542.28(9), F.S.** -- Notwithstanding s. 119.07(1), it is the duty of the Attorney General or a state attorney to maintain the secrecy of all evidence, testimony, documents, work product, or other results of an investigative demand relevant to an antitrust investigation; however, the Attorney General or state attorney may disclose such investigative evidence to the agencies enumerated in the section.

**Section 548.021(2), F.S.** -- Disclosure of a license applicant's social security number which is obtained by the State Athletic Commission pursuant to the statute is limited to child support enforcement purposes.

**Section 550.0251(9), F.S.** -- All information obtained by the Division of Parimutuel Wagering of the Department of Business and Professional Regulation pursuant to an investigation for an alleged violation of the chapter or rules of the division is exempt from disclosure until an administrative complaint is issued or the investigation is closed or ceases to be active, as defined therein. The division may, however, provide information to any law enforcement agency or other regulatory agency. With the exception of active criminal intelligence or criminal investigative information and any other information that, if disclosed, would jeopardize the safety of an individual, all other information, records and transcriptions become public when the investigation is closed or ceases to be active.

**Section 550.2415(1)(a), F.S.** -- Test results and the identities of racing animals being tested and of their trainers and owners are confidential and exempt for 10 days after testing of all samples collected on a particular day has been completed and any positive test results derived from such samples have been reported to the director of the Division of Pari-mutuel Wagering or administrative action has been commenced.

**Section 556.113, F.S.** -- Proprietary confidential business information held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system is exempt.



**Section 560.129, F.S.** -- Except as otherwise provided in the exemption, information concerning an investigation or examination by the Office of Financial Regulation pursuant to the Money Transmitter's Code, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from disclosure until the investigation or examination ceases to be "active" as that term is defined in the exemption. Confidentiality is also provided for other records such as trade secrets and personal financial records. Other records may also remain confidential if disclosure would result in any of the consequences listed in the exemption. Quarterly reports submitted by a money transmitter are confidential.

**Section 560.4041, F.S.** -- Information that identifies a drawer or deferred presentment provider contained in the database authorized under s. 560.404, is confidential and exempt from public disclosure requirements and may not be released except as provided in the subsection.

**Section 561.19(2)(b), F.S.** -- Any portion of the drawing results of a particular county to determine which applicants are to be considered for beverage licenses which reveals the rank order of persons not receiving notice of selection is confidential and exempt from s. 119.07(1), until such time as all of the licenses from that county's drawing have been issued.

**Section 569.215(1), F.S.** -- Proprietary confidential business information received by specified state officials or outside counsel representing the state for the purpose of negotiation or verification of annual tobacco settlement payments is confidential and exempt from public disclosure requirements.

**Section 570.48(3), F.S.** -- Records of the Division of Fruit and Vegetables of the Department of Agriculture and Consumer Services are public records; except that trade secrets as defined in s. 812.081 are confidential and exempt from s. 119.07(1). The subsection shall not be construed to limit certain enumerated disclosures.

**Section 570.544(7), F.S.** -- Records of the Division of Consumer Services of the Department of Agriculture and Consumer Services are public records; however, customer lists, customer names, and trade secrets are confidential and exempt from s. 119.07(1). Disclosure necessary to enforcement procedures is not violative of this prohibition.

**Section 570.903(6), F.S.** -- The identity of a donor or prospective donor to a direct-support organization established to assist programs of the Department of Agriculture and Consumer Services who desires to remain anonymous and all information identifying such donor or prospective donor is confidential and exempt from disclosure.

**Section 570.953, F.S.** -- The identity of a donor to the Florida Agriculture Center and Horse Park Authority, if requested by the donor in writing, is confidential and exempt from disclosure.

**Section 573.123(2), F.S.** -- Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order issued by the Department of Agriculture and Consumer Services is confidential and exempt from

s. 119.07(1) and shall not be disclosed except as provided in the subsection. A person who receives such confidential information shall maintain its confidentiality.

**Section 581.199, F.S.** -- It is unlawful for any authorized representative who in an official capacity obtains under the provisions of this chapter (relating to plant industry) any information entitled to protection as a trade secret, as defined in s. 812.081, to reveal that information to any unauthorized person.

**Section 601.10(8), F.S.** -- Information which consists of a trade secret as defined in s. 812.081(1)(c) which is received by the Department of Citrus from citrus growers and industry-related persons pursuant to this subsection is confidential and exempt from s. 119.07(1) and shall not be disclosed.

**Section 601.15(7)(d), F.S.** -- Commercial information which constitutes a trade secret as defined in s. 812.081 and which is required by the Department of Citrus from participants in noncommodity advertising and promotional programs in order to determine eligibility for and performance in such programs, is confidential and exempt from s. 119.07(1).

**Section 601.152(8)(c), F.S.** -- Information relating to marketing orders which is furnished to the Department of Citrus pursuant to this section and which, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from s. 119.07(1).

**Section 601.76, F.S.** -- Citrus fruit coloring product formula information filed with the Department of Agriculture and Consumer Services under this section is a trade secret as defined in s. 812.081, is confidential and exempt from s. 119.07(1), and shall be divulged only as provided in the section.

**Section 607.0505(6), F.S.** -- Information provided to, and records and transcripts obtained by, the Department of Legal Affairs pursuant to this section relating to corporations or alien business organizations are confidential and exempt from s. 119.07(1) while the investigation is active. The department shall not disclose confidential information, records, or transcripts except as authorized by the Attorney General in the circumstances listed in the subsection. Similar confidentiality provisions exist relating to information received by the department regarding nonprofit corporations (s. 617.0503[6]).

**Section 624.23, F.S.** -- Personal financial and health information as defined therein held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191 is confidential and exempt.

**Section 624.231, F.S.** -- If the Department of Financial Services or the Office of Insurance Regulation determines that any portion of a record requested by a person is exempt pursuant to Ch. 119, the insurance code, or Ch. 641, the department or office shall disclose to the person in writing that the requested record will be provided in a redacted format and that there will be additional fees charged for staff time associated with researching and redacting the exempt portion of the record. Before the department

or office provides the record, the person must affirm his or her request to receive the record.

**Section 624.310(3)(f), F.S.** -- An emergency order entered by the Office of Insurance Regulation or the Department of Financial Services against a licensee or affiliated party under this subsection is confidential and exempt from s. 119.07(1) until made permanent, unless the department or office finds that the confidentiality will result in substantial risk of financial loss to the public. Emergency cease and desist orders that are not made permanent are available for public inspection 1 year from the date the emergency order expires; however, portions of such order shall remain confidential if disclosure would result in any of the consequences listed in the paragraph.

**Section 624.311(2), F.S.** -- Records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt from s. 119.07(1) until termination of all litigation and settlement of all claims arising out of the same incident.

**Section 624.319(3), F.S.** -- Examination reports of insurers prepared by the Office of Insurance Regulation or the Department of Financial Services or its examiner pursuant to this section are confidential and exempt from s. 119.07(1) until filed. Investigation reports are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the paragraph. After an investigation is completed or ceases to be active, portions of such records shall remain confidential and exempt if disclosure would result in any of the consequences listed in the paragraph. Work papers held by the Department of Financial Services or the Office of Insurance Regulation are confidential and exempt from disclosure until the examination report is filed or until the investigation is complete or no longer active; however, portions of work papers may remain confidential under the conditions specified therein. Information received from another governmental entity or the National Association of Insurance Commissioners, which is confidential or exempt when held by that entity, for the department's or office's use in the performance of its examination or investigation duties are confidential and exempt from disclosure requirements. Lists of insurers or regulated companies are confidential and exempt from s. 119.07(1), if the conditions set forth in the paragraph apply.

**Section 624.40851(1) and (2), F.S.** -- Risk-based capital plans and reports as described in the exemption that are held by the Office of Insurance Regulation, as well as specified additional related materials, are confidential and exempt from disclosure. Hearings relating to the office's actions regarding such risk-based capital records, are exempt from open meetings requirements, subject to specified conditions.

**Section 624.82(1), F.S.** -- Orders, records, and other information in the possession of the Office of Insurance Regulation relating to the supervision of any insurer are confidential and exempt from s. 119.07(1), except as otherwise provided in this section. Proceedings and hearings relating to the office's supervision of any insurer are exempt from s. 286.011, except as otherwise provided in this section.

**Section 624.86, F.S.** -- During the period of administrative supervision, the Office of Insurance Regulation may meet with a supervisor appointed under this part or

representatives of the supervisor, and such meetings are exempt from s. 286.011.

**Section 625.121(3)(a)10., F.S.** -- Except as otherwise provided in this paragraph, a memorandum or other material in support of the actuarial opinion required to be furnished to the Office of Insurance Regulation under this subsection, is confidential and exempt from s. 119.07(1).

**Section 626.171(6), F.S.** -- Disclosure of a license applicant's social security number which is obtained by the Department of Financial Services pursuant to this section is limited to child support enforcement purposes.

**Section 626.511(3), F.S.** -- Any information or record regarding the termination of an appointment which is furnished to the Office of Insurance Regulation or the Department of Financial Services under this section is confidential and exempt from s. 119.07(1).

**Section 626.521(5), F.S.** -- Information contained in credit or character reports obtained by the Department of Financial Services under this section (licensure applications) is confidential and exempt from s. 119.07(1).

**Section 626.601(6), F.S.** -- The complaint and any information obtained pursuant to the investigation of a licensee by the Office of Insurance Regulation or the Department of Financial Services are confidential and exempt from s. 119.07(1), unless the department takes specified action against the licensee.

**Section 626.631(2), F.S.** -- Except as provided in the subsection, the records or evidence of the Department of Financial Services relative to a hearing on the suspension or revocation of a license or appointment are confidential and exempt from s. 119.07(1) until after the material has been published at the hearing.

**Section 626.842(3), F.S.** -- Information contained in credit or character reports furnished to the Department of Financial Services under this section (relating to applications of title insurance agents) is confidential and exempt from s. 119.07(1).

**Section 626.8433(3), F.S.** -- Any information or record furnished to the Department of Financial Services under this section regarding the reasons for termination of the appointment of a title insurance agent is confidential and exempt from s. 119.07(1).

**Section 626.884(2), F.S.** -- Except as provided in the subsection, information contained in the books and records of an insurance administrator is confidential and exempt from s. 119.07(1) if the disclosure would reveal a trade secret as defined in s. 688.002.

**Section 626.921(8), F.S.** -- Information furnished to the Department of Financial Services pursuant to pertinent statutes relating to policies and examinations of surplus lines agents is confidential and exempt if disclosure would reveal information specific to a particular policy or policy holder. Information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law is confidential and exempt if disclosure would reveal information specific to a particular policy or policy holder.

**Section 626.9651, F.S.** -- The Department of Financial Services and the Financial

Services Commission shall adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information.

**Section 626.989(5), F.S.** -- Records of the Department of Financial Services and the Office of Insurance Regulation relating to an investigation of insurance fraud under this section are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the subsection, unless disclosure would result in certain enumerated consequences.

**Section 627.0628(3)(f), F.S.** -- A trade secret as defined in s. 668.002 that is used in designing and constructing a hurricane loss model and that is provided pursuant to this section, by a private company to the Florida Commission on Hurricane Loss Projection Methodology, Office of Insurance Regulation, or the appointed consumer advocate, is confidential and exempt from disclosure requirements. That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential by this exemption is discussed is exempt from open meetings requirements. Although the closed meeting must be recorded, the recording is exempt from disclosure.

**Section 627.06292(1), F.S.** -- Reports of hurricane loss data and associated exposure data that are specific to a particular insurance company, as reported by an insurer or a licensed rating organization to the Office of Insurance Regulation or to a state university center are exempt from disclosure requirements.

**Section 627.311(4)(a), F.S.** -- Certain records of the Florida Automobile Joint Underwriting Association, as described in the exemption, are confidential and exempt from disclosure as set forth in the subsection.

**Section 627.311(4)(b), F.S.** -- The Florida Automobile Joint Underwriting Association must keep portions of meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed exempt from open meetings requirements, subject to the conditions set forth in the exemption. A copy of the transcript, less any confidential and exempt information, of any closed meeting during which confidential and exempt claims files are discussed shall become public as to individual claims files after settlement of that claim.

**Section 627.3121, F.S.** -- Certain records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., as described in the exemption, are confidential and exempt and may only be released as prescribed therein. That portion of a meeting of the association's board of governors, or any subcommittee of the association's board, at which records made confidential and exempt by the section are discussed is exempt from open meeting requirements; the transcript and minutes of exempt portions of meetings are confidential and exempt from disclosure. Those portions of the transcript or the minutes pertaining to a confidential and exempt claims file are no longer confidential and exempt upon termination of all litigation with regard to that claim.

**Section 627.351(4)(g), F.S.** -- All records, relating to the Medical Malpractice Joint

Underwriting Association or its operation are open for public inspection, except that a claim file in the possession of the Association is confidential and exempt from s. 119.07(1) during processing of that claim. Information in these files that identifies an injured person is confidential and exempt from s. 119.07(1).

**Section 627.351(6)(x)1., F.S.** -- Certain records of the Citizens Property Insurance Corporation, as described in the exemption, are confidential and exempt from disclosure.

**Section 627.351(6)(x)4., F.S.** -- Portions of meetings of the Citizens Property Insurance Corporation are exempt from open meetings requirements where confidential underwriting files or confidential open claims files are discussed, subject to the conditions set forth in the exemption. A copy of the transcript, less any exempt matters, of any closed meeting where claims are discussed shall become public as to individual claims after settlement of the claim.

**Section 627.6699(8)(c), F.S.** -- Information relating to rating and renewal practices of small employer health insurance carriers which is submitted by the carriers to the Office of Insurance Regulation pursuant to this subsection constitutes proprietary and trade secret information and may not be disclosed except as agreed to by the carrier or pursuant to court order.

**Section 627.912(2)(e), F.S.** -- The name and address of the injured person that is contained in reports to the Office of Insurance Regulation regarding professional liability claims is confidential and exempt from s. 119.07(1), and must not be disclosed without the person's consent, except for disclosure to the Department of Health.

**Section 627.9122(2)(e), F.S.** -- The name of the injured person contained in a claim report filed by an insurer providing liability coverage for officers and directors is confidential and exempt from s. 119.07(1), and must not be disclosed by the Office of Insurance Regulation without the consent of the injured person.

**Section 627.9126(3)(a)6., F.S.** -- The names of claimants identified in reports filed by liability insurers with the Office of Insurance Regulation are confidential and exempt from s. 119.07(1).

**Section 631.398(1), F.S.** -- Reports and recommendations made by specified persons to the Office of Insurance Regulation or to the Department of Financial Services relative to the solvency, liquidation, rehabilitation, or conservation of a member insurer or germane to the solvency of a company seeking to do insurance business in this state, are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.582, F.S.** -- Certain records of the Florida Insurance Guaranty Association such as specified claims, medical records that are part of a claims file, information relating to the medical condition or medical status of a claimant, and records pertaining to matters reasonably encompassed in privileged attorney-client communications of the association, are confidential and exempt.

**Section 631.62(2), F.S.** -- A request from the board of directors of the Florida Insurance Guaranty Association that the Office of Insurance Regulation order an examination of any member insurer is confidential and exempt from s. 119.07(1) until the examination report is released to the public.

**Section 631.62(3), F.S.** -- The reports and recommendations by the board of directors of the Florida Insurance Guaranty Association on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.723(1), F.S.** -- The reports and recommendations by the board of directors of the Florida Life and Health Insurance Guaranty Association to the Department of Financial Services or to the Office of Insurance Regulation on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or a company seeking to do insurance business in Florida are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.723(3), F.S.** -- A request by the board of directors of the Florida Life and Health Insurance Guaranty Association that the Office of Insurance Regulation order the examination of any member insurer is confidential and exempt from s. 119.07(1) until the examination report is released to the public.

**Section 631.724, F.S.** -- Negotiations or meetings of the Florida Life and Health Insurance Guaranty Association involving discussions of the association's powers and duties under 631.717 are exempt from s. 286.011. Records of such negotiations or meetings are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

**Section 631.931, F.S.** -- The reports and recommendations by the board of directors of the Florida Workers' Compensation Insurance Guaranty Association under s. 631.917 on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer are confidential and exempt until the termination of a delinquency proceeding.

**Section 631.932, F.S.** -- Negotiations between a self-insurance fund and the Florida Workers' Compensation Insurance Guaranty Association are exempt from s. 286.011. Documents related to such negotiations that reveal identifiable payroll and loss and individual claim information are confidential and exempt.

**Section 633.111, F.S.** -- Records obtained or prepared by the State Fire Marshal pursuant to his or her investigation of fires are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as that term is defined in the section.

**Section 633.175(5), F.S.** -- Discussions involving officials of the Department of Financial Services and an insurance company in accordance with this section (relating to investigation of fraudulent insurance claims and crimes) are confidential and exempt from s. 286.011.

**Section 633.527(1), F.S.** -- Test material relating to applicants for licensure, certification, or permitting by the State Fire Marshal is made confidential by s. 119.071(1)(a). An applicant may waive confidentiality in writing for purposes of discussion with the State Fire Marshal or his or her staff.

**Section 634.045(5), F.S.** -- The filings made by a guarantee organization pursuant to this section relating to guarantee agreements provided by motor vehicle service agreement companies are confidential and exempt from s. 119.07(1).

**Section 634.201(3), F.S.** -- The Department of Financial Service's records or evidence relative to a hearing for the suspension or revocation of the license or appointment of a salesman of automobile warranties are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be "active," as that term is defined in the subsection.

**Section 634.348, F.S.** -- Active examination or investigatory records of the Department of Financial Services or the Office of Insurance Regulation made or received pursuant to Part II, Ch. 634 (Home Warranty Associations) are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be "active," as that term is defined in the section.

**Section 634.4065(5), F.S.** -- The filings made by a guarantee organization pursuant to this section relating to guarantee agreements provided by service warranty associations are confidential and exempt from s. 119.07(1).

**Section 634.444, F.S.** -- Active examination or investigatory records of the Department of Financial Services or the Office of Insurance Regulation made or received pursuant to Part III, Ch. 634 (Service Warranty Associations) are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be "active," as that term is defined in the section.

**Section 636.064(1) and (2), F.S.** -- Information pertaining to the diagnosis, treatment, or health of an enrollee of a prepaid limited health service organization is confidential and exempt from disclosure, and shall only be available pursuant to specific written consent of the enrollee or as otherwise provided by law. Any proprietary financial information contained in contracts entered into with providers by prepaid limited health service organizations is confidential and exempt from disclosure.

**Section 636.064(3), F.S.** -- Information obtained or produced by the Department of Financial Services or the Office of Insurance Regulation pursuant to an investigation or examination of a prepaid limited health service organization is confidential and exempt from disclosure until the examination report has been filed pursuant to s. 624.319 or until the investigation is completed or ceases to be "active," as that term is defined in the subsection. Except for information specified in the subsection, all information obtained by the office pursuant to an examination or investigation shall be available after the examination report has been filed or the investigation is completed or ceases to be active.

**Section 641.515(2), F.S.** -- Patient-identifying information contained in reports and



records prepared or obtained under cited statutes (relating to investigation of health maintenance organizations) by the Agency for Health Care Administration or by an outside source, is confidential and exempt from s. 119.07(1).

**Section 641.55(5)(c), F.S.** -- Except as otherwise provided in this subsection, any identifying information contained in the reports of a health maintenance organization filed with the Agency for Health Care Administration under this subsection is confidential and exempt from s. 119.07(1).

**Section 641.55(6), F.S.** -- Incident reports filed with the Agency for Health Care Administration by a health maintenance organization pursuant to this subsection are confidential and exempt from s. 119.07(1).

**Section 641.55(8), F.S.** -- Identifying information in records of a health maintenance organization which are obtained by the Agency for Health Care Administration pursuant to this section (internal risk management program) is confidential and exempt from s. 119.07(1). Identifying information contained in records obtained under s. 456.071 is exempt to the extent that it is part of the record of disciplinary proceedings made available to the public by the agency or appropriate board.

**Section 641.67, F.S.** -- The following information is confidential and exempt and may not be released except as provided in the exemption: patient records held by a district managed care ombudsman committee; the name or identity of a complainant who files a complaint with a committee; and any problem identified by a committee as a result of an investigation.

**Section 641.68, F.S.** -- That portion of an ombudsman committee meeting where patient records and information identifying a complainant are discussed is exempt from open meetings requirements.

**Section 648.26(3), F.S.** -- The Department of Financial Services' investigatory records pertaining to bail bond agents and runners are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the subsection.

**Section 648.34(3), F.S.** -- Information in a character and credit report furnished to the Department of Financial Services as part of an application for licensure as a bail bond agent is confidential and exempt from s. 119.07(1).

**Section 648.39(1), F.S.** -- Information furnished to the Department of Financial Services pursuant to this subsection regarding the termination of appointment of a managing general agent, bail bond agent, or temporary bail bond agent is confidential and exempt from s. 119.07(1).

**Section 648.41, F.S.** -- Information furnished to the Department of Financial Services pursuant to this subsection regarding the termination of appointment of temporary bail bond agents is confidential and exempt from s. 119.07(1).

**Section 648.46(3), F.S.** -- The complaint and all information obtained pursuant to the investigation of a bail bond agent or runner licensee by the Department of Financial

Services are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as defined in the subsection.

**Section 651.105(3), F.S.** -- Reports of the results of such financial examinations or providers engaged in the execution of care contracts must be kept on file by the Office of Insurance Regulation. Any investigatory records, reports or documents held by the office are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the subsection.

**Section 651.111(2), F.S.** -- Unless the complainant who has filed a complaint against a continuing care provider specifically requests otherwise, neither the substance of the complaint which is provided to the provider nor any copy of the complaint or any record which is published, released, or otherwise made available to the provider shall disclose the name of any person mentioned in the complaint except the names of Office of Insurance Regulation personnel conducting the investigation or inspection pursuant to this chapter.

**Section 651.121(5)(c), F.S.** -- Except for proceedings conducted under s. 651.018 (authorizing the Office of Insurance Regulation to place a facility in administrative supervision), the books and records of the Continuing Care Advisory Council to the Office of Insurance Regulation of the Financial Services Commission shall be open to inspection at all times.

**Section 651.134, F.S.** -- Any active investigatory record of the Office of Insurance Regulation made or received under Ch. 651 (Continuing Care Contracts) and any active examination record necessary to complete an active investigation is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active," as that term is defined in the section.

**Section 655.0321, F.S.** -- The Office of Financial Regulation shall consider the public purposes specified in s. 119.14(4)(b) in determining whether the hearings and proceedings conducted pursuant to s. 655.033 (cease and desist orders) and s. 655.037 (suspension or removal orders) shall be closed and exempt from s. 286.011, and whether related documents shall be confidential and exempt from s. 119.07(1).

**Section 655.033(6), F.S.** -- An emergency order entered by the Office of Financial Regulation pursuant to this subsection (relating to the issuance of cease and desist orders to financial institutions in certain circumstances) is confidential and exempt from s. 119.07(1) until the order is made permanent, unless the office finds that such confidentiality will result in substantial risk of financial loss to the public.

**Section 655.057(1), F.S.** -- Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the Office of Financial Regulation are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as that term is defined in the section. After the investigation is completed or ceases to be active, portions of the records shall be confidential and exempt from s. 119.07(1) to the extent that disclosure would cause any of the consequences listed in the subsection.

**Section 655.057(2), F.S.** -- Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, prepared by, or for the use of, the Office of Financial Regulation or other agency responsible for regulation of banking institutions in this state are confidential and exempt from s. 119.07(1). Examination, operation, or condition reports of a financial institution shall be released within 1 year after the appointment of a liquidator, receiver, or conservator to such financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from s. 119.07(1).

**Section 655.057(3), F.S.** -- Any confidential information or records obtained from the Office of Financial Regulation pursuant to this subsection (authorizing specified disclosures of records or information) shall be maintained as confidential and exempt from s. 119.07(1).

**Section 655.057(4)(b), F.S.** -- Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body which received the records or information except in a case involving an investigation of charges against a public official subject to impeachment in which case the legislative body shall determine the extent of disclosure.

**Section 655.057(5), F.S.** -- Except as otherwise provided in this subsection, the list of members of a credit union or mutual association which is submitted to the Office of Financial Regulation is confidential and exempt from s. 119.07(1).

**Section 655.057(6), F.S.** -- Except as otherwise provided in this subsection, any portion of the list of shareholders of a bank, trust company, and stock association which is submitted to the Office of Financial Regulation pursuant to this subsection and which reveals the identities of the shareholders is confidential and exempt from s. 119.07(1).

**Section 655.057(7), F.S.** -- Confidential documents supplied to the Office of Financial Regulation or to employees of a financial institution by other governmental agencies or by the Florida Credit Union Guaranty Corporation Inc., shall be confidential and exempt from s. 119.07(1) and may be made public only with the consent of such agency or corporation.

**Section 655.50(7), F.S.** -- Except as provided in the exemption, all reports and records filed with the Office of Financial Regulation pursuant to this section (Florida Control of Money Laundering in Financial Institutions Act) are confidential and exempt from s. 119.07(1).

**Section 681.1097(4), F.S.** -- A mediation conference conducted pursuant to the RV Mediation and Arbitration Program shall be confidential.

**Section 687.144(6), F.S.** -- The material compiled by the Office of Financial Regulation in an investigation or examination under this act (relating to loan brokers) is confidential until the investigation or examination is complete.

**Section 688.006, F.S.** -- In an action under the Uniform Trade Secrets Act, a court shall preserve the secrecy of an alleged trade secret by reasonable means as described in the section.

**Section 717.117(8), F.S.** -- Social security numbers and property identifiers contained in reports to the Department of Financial Services concerning abandoned and unclaimed property are confidential and exempt and may not be released except social security numbers may be released to the entities specified in the exemption for the limited purpose of locating owners of abandoned or unclaimed property.

**Section 717.1301(5), F.S.** -- Material compiled by the Department of Financial Services in an investigation under the Disposition of Unclaimed Property Act is confidential until the investigation is complete; provided that such material remains confidential if it is submitted to another agency for investigation or prosecution and such investigation has not been completed or become inactive.

**Section 721.071, F.S.** -- If a developer or other person filing material with the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation pursuant to chapter 721 relating to time-share plans expects the division to keep the material confidential on grounds that the material constitutes a trade secret as defined in s. 812.081, that person shall file the material together with an affidavit of confidentiality as provided in the section. If the division is satisfied as to the facial validity of the claim of confidentiality, it shall keep the affidavit and supporting documentation confidential and shall not disclose such information except upon administrative or court order.

**Section 723.006(3), F.S.** -- Except as otherwise provided in the subsection, mobile home park financial records, as defined in the subsection, which are acquired by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation pursuant to an investigation under this section are confidential and exempt.

**Section 733.604(1)(b), F.S.** -- Any inventory of an estate filed with the clerk of court in conjunction with the administration of an estate or of an elective estate filed with the clerk of the court in conjunction with an election made in accordance with Part II, Ch. 732, whether initial, amended, or supplementary, is confidential and exempt. Any accounting, whether interim, final, amended, or supplementary, filed in an estate proceeding is confidential and exempt.

**Section 741.04(1), F.S.** -- Disclosure of a social security number required in a marriage license certificate filed with clerk of court pursuant to this section is limited to child support enforcement purposes.

**Section 741.29(2), F.S.** -- A law enforcement agency shall, without charge, send a copy of the initial police report of domestic violence, as well as any subsequent, supplemental, or related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under Ch. 119 to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report.

**Section 741.30(3)(b), F.S.** -- A petitioner seeking an injunction for protection against domestic violence may furnish his or her address to the court in a separate confidential filing for safety reasons if the petitioner requires the location of his or her current residence to be confidential.

**Section 741.313(7), F.S.** -- Personal identifying information contained in records documenting an act of domestic violence that is submitted to an agency by an agency employee seeking to take leave as provided therein as provided therein is confidential and exempt. A written request for leave submitted by an agency employee and any agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken.

**Section 741.3165, F.S.** -- Information that is confidential or exempt and that is obtained by a domestic violence fatality review team conducting activities as described in s. 741.316 shall retain its confidential or exempt status when held by the team. Information contained in a record created by a team pursuant to s. 741.316 that reveals the identity of a victim of domestic violence or the identity of the victim's children is confidential and exempt. Portions of meetings of the team regarding domestic violence fatalities and their prevention, during which confidential or exempt information, the identity of the victim, or the identity of the victim's children are discussed, are exempt from s. 286.011, F.S.

**Section 741.406, F.S.** -- The name, address, and telephone number of a participant in the Address Confidentiality Program for Victims of Domestic Violence may not be included in any list of registered voters available to the public.

**Section 741.465, F.S.** -- The addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program for Victims of Domestic Violence held by the Office of the Attorney General are exempt from disclosure, except that the information may be disclosed under the following circumstances: to a law enforcement agency for purposes of assisting in the execution of a valid arrest warrant; if directed by court order, to a person identified in the order; or if the certification has been canceled. The names, addresses, and telephone numbers of participants contained in voter registration and voting records are exempt, except the information may be disclosed under the following circumstances: to a law enforcement agency for purposes of assisting in the execution of an arrest warrant or, if directed by court order, to a person identified in the order.

**Section 742.031(3), F.S.** -- Disclosure of a social security number obtained as part of adjudication of paternity proceedings and as required by pertinent federal law is limited to child support enforcement purposes.

**Section 742.032(3), F.S.** -- Disclosure of the social security number required to be filed with the tribunal in a paternity or child support proceeding pursuant to s. 742.032(1) is limited to child support enforcement purposes.

**Section 742.09, F.S.** -- It is unlawful for the owner, publisher, manager, or operator of any newspaper, magazine, radio station, or any other publication, to publish the name of any parties to any court proceeding to determine paternity except for the

purpose of serving process by publication as provided under s. 49.011(15).

**Section 742.091, F.S.** -- Records of any proceeding under the determination of paternity statute which was subsequently dismissed when the mother of the illegitimate child and reputed father marry thereby making the child legitimate are sealed against public inspection.

**Section 742.10(2), F.S.** -- Disclosure of the social security number of parties to a proceeding to determine paternity for children born out of wedlock which is obtained pursuant to this section shall be limited to child support enforcement purposes.

**Section 742.16(9), F.S.** -- All papers and records pertaining to the affirmation of parental status for gestational surrogacy, including the original birth certificate, are confidential and exempt and subject to inspection only upon court order.

**Section 744.1076, F.S.** -- A court order appointing a court monitor is confidential and exempt from public disclosure requirements. Reports of a court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt. The reports may be subject to inspection as determined by the court or upon a showing of good cause. Court determinations relating to a finding of no probable cause and court orders finding no probable cause are confidential; however, such determinations and findings may be subject to inspection as determined by the court or upon a showing of good cause.

**Section 744.3701, F.S.** -- Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the individuals specified in the section.

**Section 744.708(2), F.S.** -- No report or disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law.

**Section 744.7081, F.S.** -- All records held by the Statewide Public Guardianship Office relating to the medical, financial, or mental health of vulnerable citizens, persons with a developmental disability, or persons with a mental illness, are confidential and exempt from public disclosure requirements.

**Section 744.7082(6), F.S.** -- The identity of a donor or prospective donor of funds or property to the direct-support organization of the Statewide Public Guardianship Office who wishes to remain anonymous and all information identifying the donor or prospective donor is confidential and exempt from disclosure requirements, and that anonymity must be maintained in any publication concerning the direct-support organization.

**Section 760.11(12), F.S.** -- Complaints filed with the Commission on Human Relations and all records in the commission's custody which relate to and identify a particular person, including, but not limited to, the entities specified in the subsection are confidential and may not be disclosed except to the parties or in the course of a hearing or proceeding under this section. This restriction does not apply to any record which is part of the record of a hearing or court proceeding.

**Section 760.34(1), F.S.** -- Nothing said or done in the course of informal endeavors by the Commission on Human Relations to resolve complaints about discriminatory housing practices may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned.

**Section 760.36, F.S.** -- A conciliation agreement arising out of a complaint filed under the Fair Housing Act shall be made public unless the complainant and the respondent otherwise agree and the Commission on Human Relations determines that disclosure is not required to further the purposes of the Act.

**Section 760.40(2)(a), F.S.** -- Except as provided in the subsection, DNA analysis results information held by a public entity is exempt from s. 119.07(1).

**Section 760.50(5), F.S.** -- Employers shall maintain the confidentiality of information relating to the medical condition or status of any person covered by health or life insurance benefits provided or administered by the employer. Such information in the possession of a public employer is exempt from s. 119.07(1).

**Section 765.51551, F.S.** -- Donor-identifying information maintained in the anatomical gifts donor registry is exempt from the Public Records Law except as provided therein.

**Section 766.101(7)(c), F.S.** -- Proceedings of medical review committees are exempt from s. 286.011 and any advisory reports provided to the Department of Health are confidential and exempt from s. 119.07(1), regardless of whether probable cause is found.

**Section 766.105(3)(e)2., F.S.** -- A claim file in the possession of the Patient's Compensation Fund is confidential and exempt until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law.

**Section 766.106(6)(b)3., F.S.** -- An examination report on an injured claimant which is made pursuant to this section relating to medical malpractice claims is available only to the parties and their attorneys and may be used only for the purpose of presuit screening. Otherwise, such report is confidential and exempt from s. 119.07(1).

**Section 766.1115(4)(c), F.S.** -- All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities contracting with health care providers under this paragraph, are confidential and exempt.

**Section 766.305(3), F.S.** -- Information furnished by a person seeking compensation under the Florida Birth-Related Neurological Injury Compensation Plan pursuant to this subsection shall remain confidential and exempt under the provisions of s. 766.315(5)(b), F.S.

**Section 766.314(8), F.S.** -- Information obtained by the Florida Birth-Related Neurological Injury Compensation Association to determine the actual cost of maintaining the fund on an actuarially sound basis shall be utilized solely for the

purpose of assisting the association. Such information shall otherwise be confidential and exempt

**Section 766.315(5)(b), F.S.** -- A claim file in the possession of the Florida Birth-Related Neurological Injury Compensation Association or its representative is confidential and exempt until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law.

**Section 768.28(16)(b), F.S.** -- Claims files maintained by any risk management program administered by the state, its agencies and subdivisions are confidential and exempt until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies as provided in the paragraph; such records held by the receiving agency remain confidential as provided in the paragraph.

**Section 768.28(16)(c), F.S.** -- Portions of meetings and proceedings conducted pursuant to a risk management program administered by the state, its agencies or subdivisions relating solely to the evaluation of claims or relating solely to offers of compromise of claims filed with the program are exempt from s. 286.011.

**Section 768.28(16)(d), F.S.** -- Minutes of the meetings and proceedings of a risk management program administered by the state, its agencies or its subdivisions relating solely to the evaluation of claims or relating solely to offers of compromise of claims filed with such risk management programs are exempt from s. 119.07(1) until termination of all litigation and settlement of all claims arising out of the same incident.

**Section 787.03(6)(c)1., F.S.** -- The current address and telephone number of the person taking a child or incompetent person when fleeing from domestic violence or to preserve the minor or incompetent person from danger and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03(6)(b) by the person who takes such child or incompetent person; are confidential and exempt from public disclosure requirements.

**Section 790.0601, F.S.** -- Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06 held by the Division of Licensing of the Department of Agriculture and Consumer Services is confidential and exempt from disclosure requirements. Information made confidential and exempt shall be disclosed with express written consent of the applicant or licensee, by court order, or upon request by a law enforcement agency in connection with the performance of lawful duties.

**Section 790.065(2)(a)4.d., F.S.** -- Hearing on petition by person who has been adjudicated mentally defective or committed to a mental institution for relief from the firearm disabilities imposed by such adjudication or commitment may be open or closed as the petitioner may choose.



**Section 790.065(4), F.S.** -- Any records containing information specified in this section relating to a buyer or transferee of a firearm who is not prohibited under state or federal law from receipt or transfer of a firearm shall be confidential and exempt from s. 119.07(1) and may not be disclosed by the Department of Law Enforcement to any other person or agency.

**Section 790.335(2), F.S.** -- Subject to specified exceptions, no governmental agency or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

**Section 794.024, F.S.** -- A public employee or officer having access to the photograph, name or address of a person alleged to be a victim of an offense described in this chapter (sexual battery), chapter 800 (lewdness, indecent exposure), s. 827.03 (aggravated child abuse), s. 827.04 (child abuse), or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), or to a rape crisis center or sexual assault counselor who will be offering services to the victim.

**Section 794.03, F.S.** -- It is unlawful to print, publish, or broadcast or cause or allow to be printed, published or broadcast in any instrument of mass communication the name, address or other identifying fact or information of the victim of any sexual offense. Such identifying information is confidential and exempt.

**Section 815.04(3)(a), F.S.** -- Data, programs or supporting information which is a trade secret as defined in s. 812.081 which is part of a computer system held by an agency as defined in Ch. 119 is confidential and exempt.

**Section 815.045, F.S.** -- It is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records.

**Section 828.30(5), F.S.** -- An animal owner's name, street address, phone number, and animal tag number contained in a rabies vaccination certificate provided to the animal control authority is confidential and exempt from disclosure except as provided in the exemption.

**Section 877.19(3), F.S.** -- Certain information on hate crimes which is reported to the Florida Department of Law Enforcement pursuant to this statute is confidential and exempt. Data required pursuant to this section shall be used only for research or statistical purposes and shall not include any information that may reveal the identity of a crime victim.

**Section 893.0551(2), F.S.** -- Certain identification and location information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the

practitioner who is acting on behalf of and at the direction of the practitioner; a pharmacist, or a pharmacy, that is contained in Department of Health records under the electronic prescription drug monitoring program for monitoring the prescribing and dispensing of controlled substances is confidential and exempt from disclosure.

**Section 896.102(2), F.S.** -- Information and documents filed with the Department of Revenue regarding certain currency transactions are confidential and exempt; however, the information may be released as provided in the subsection.

**Section 905.17(1), F.S.** -- Stenographic records, notes and transcriptions made by a court reporter during a grand jury session are confidential and exempt from s. 119.07(1) and shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection.

**Section 905.24, F.S.** -- Grand jury proceedings are secret and a grand juror or interpreter appointed pursuant to s. 90.6063(2) shall not disclose the nature or substance of the deliberations or vote of the grand jury.

**Section 905.26, F.S.** -- Unless ordered by the court, a grand juror, reporter, stenographer, interpreter, or officer of the court may not disclose the finding of an indictment against a person not in custody or under recognizance, except by issuing or executing process on the indictment, until the person has been arrested.

**Section 905.27(1) and (2), F.S.** -- A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury may not disclose evidence received by it except when required by a court. It is unlawful for any person knowingly to publish, disclose or cause to be published or disclosed any witness's testimony before a grand jury unless such testimony is or has been disclosed in a court proceeding.

**Section 905.28(1), F.S.** -- A report or presentment of a grand jury relating to an individual which is not accompanied by a true bill or indictment is confidential and exempt and shall not be made public until the individual concerned has been furnished a copy and given 15 days to file a motion to repress or expunge the report.

**Section 905.395, F.S.** -- Unless pursuant to court order, it is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate or cause or permit such publication or communication to any person outside the statewide grand jury room, any of the proceedings or identity of persons referred to or being investigated by the statewide grand jury.

**Section 914.27, F.S.** -- Information held by a law enforcement agency, prosecutorial agency, or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. Identity and location of immediate family members of such victims or witnesses are also protected as are relocation sites, techniques or procedures utilized or developed as a result of the victim and witness protective services.

**Section 916.107(8), F.S.** -- Except as provided in the subsection, a forensic client's clinical record is confidential and exempt from s. 119.07(1).

**Section 918.16(1), F.S.** -- Except as provided in s. 918.16(2), in any civil or criminal trial, when any person under 16 or any person with mental retardation as defined in cited statute is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters and court reporters, and at the request of the victim, victim or witness advocates designated by the state attorney's office.

**Section 918.16(2), F.S.** -- When the victim of a sex offense is testifying concerning that offense in any civil or criminal trial, the court shall clear the courtroom of all persons upon the request of the victim, regardless of the victim's age or mental capacity, except that parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters and court reporters, and at the request of the victim, victim or witness advocates designated by the state attorney may remain in the courtroom.

**Section 925.055(2), F.S.** -- The names of confidential informants that may be revealed to auditors of law enforcement investigative funds are confidential and exempt.

**Section 934.08(1)(b), F.S.** -- A state or federal law enforcement official who receives intelligence information as described in the paragraph is subject to any limitations on the unauthorized disclosure of such information.

**Section 934.09(8)(c), F.S.** -- Applications made and orders granted authorizing interception of wire, oral or electronic communications pursuant to cited statutes shall be sealed by the judge and shall be disclosed only upon a showing of good cause before a judge.

**Section 934.33(7), F.S.** -- The record maintained by an investigative or law enforcement agency which contains specified identifying information regarding the installation and use of a pen register or trap and trace device must be provided under seal to the court.

**Section 937.028(1), F.S.** -- When fingerprints are taken for the purpose of identifying a child, should that child become missing, the state agency, public or private organization, or other person taking such fingerprints shall not release the fingerprints to any law enforcement agency or other person for any purpose other than the identification of a missing child. Such records and data are exempt from s. 119.07(1).

**Section 943.03(2), F.S.** -- Records related to a Florida Department of Law Enforcement investigation requested by the Governor concerning official misconduct of public officials and employees, are confidential and exempt from s. 119.07(1) until the investigation is completed or is no longer "active" as defined in the subsection.

**Section 943.031(9)(c) and (d), F.S.** -- The Florida Violent Crime and Drug Control Council may close portions of meetings during which the council will hear or discuss

active criminal investigative information or active criminal intelligence information and such portions of meetings are exempt from open meetings requirements, provided that the conditions set forth in the subsection are met. A tape recording of, and any minutes and notes generated during, the closed portion of a meeting are confidential and exempt until the criminal investigative or intelligence information ceases to be active.

**Section 943.0314, F.S.** -- That portion of a meeting of the Domestic Security Oversight Council at which the council will hear or discuss active criminal investigative information or active criminal intelligence information is exempt from open meetings requirements provided that the conditions set forth in the exemption are complied with. An audio or video recording of, and any minutes and notes generated during, a closed meeting are exempt from public disclosure requirements until such time as the criminal investigative information or criminal intelligence information heard or discussed therein ceases to be active.

**Section 943.0321(4), F.S.** -- Information that is exempt from public disclosure under Ch. 119 when in the possession of the Florida Domestic Security and Counter-Terrorism Intelligence Center retains its exemption from public disclosure after such information is revealed to a law enforcement agency or prosecutor, except as otherwise provided by law. Exempt information obtained by the center from a law enforcement agency or prosecutor retains its exemption from public disclosure, except as otherwise provided by law.

**Section 943.046(1), F.S.** -- Any state or local law enforcement agency may release to the public any criminal history information and other information regarding a criminal offender, including, but not limited to, public notification by the agency of the information, unless the information is confidential and exempt from disclosure. However, this section does not contravene any provision of s. 943.053 which relates to the method by which an agency or individual may obtain a copy of an offender's criminal history record.

**Section 943.053(5), (8), (9), and (10), F.S.** -- Sealed records received by a court for the purpose of assisting judges in their case-related responsibilities, or by a private entity under contract to operate a juvenile offender facility, county detention facility or state correctional facility pursuant to cited laws remain confidential and exempt from disclosure.

**Section 943.057, F.S.** -- This section (providing for access to criminal justice information in the Department of Law Enforcement for research or statistical purposes) does not require release of confidential information or require the department to accommodate requests that would disrupt ongoing operations beyond the extent required by s. 119.07.

**Section 943.0585, F.S.** -- Notwithstanding any contrary provision of law, a criminal justice agency may comply with laws, court orders and official requests of other jurisdictions relating to expunction, correction or confidential handling of criminal history records or information derived therefrom.

**Section 943.0585(4), F.S.** -- A criminal history record ordered expunged that is

retained by the Department of Law Enforcement pursuant to this section is confidential and exempt and is not available to any person or entity except upon court order.

**Section 943.0585(4)(c), F.S.** -- Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a), is confidential and exempt, except that the Florida Department of Law Enforcement shall disclose the existence of an expunged record to the agencies set forth in the paragraph for their respective licensing and employment purposes and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity identified in the paragraph to disclose such information except to the person to whom the record relates or to persons having direct responsibility for employment or licensure decisions.

**Section 943.059, F.S.** -- Notwithstanding any contrary provision of law, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom.

**Section 943.059(4), F.S.** -- A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section is confidential and exempt and available only to the person and entities identified in the subsection.

**Section 943.059(4)(c), F.S.** -- Information relating to the existence of such record that is provided in accordance with paragraph (a) is confidential and exempt, except that the Florida Department of Law Enforcement shall disclose a sealed record to the agencies set forth in the paragraph for their respective licensing and employment purposes. It is unlawful for any employee of an entity identified in the paragraph to disclose such information except to the person to whom the record relates or to persons having direct responsibility for employment or licensure decisions.

**Section 943.1395(6)(b), F.S.** -- The report of misconduct and all records or information provided to or developed by the Criminal Justice Standards and Training Commission during the course of an investigation conducted by the commission are exempt from s. 119.07(1) and, except as otherwise provided by law, such information shall be subject to public disclosure only after a determination as to probable cause has been made or until the investigation becomes inactive. However, the officer being investigated or the officer's attorney may review records as authorized in the exemption.

**Section 943.173(3), F.S.** -- Examinations, assessments, and instruments and examination results, other than test scores on officer certification examinations, including developmental materials and workpapers, administered pursuant to s. 943.13(9) or (10) and s. 943.17 are exempt from s. 119.07(1).

**Section 943.325(14), F.S.** -- The results of a DNA analysis and the comparison of analytic results submitted to the Department of Law Enforcement under this section shall be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. Otherwise, such information is confidential and exempt.

**Section 944.606(3)(d), F.S.** -- Sexual offender information received from the

Department of Corrections by the Department of Law Enforcement, the sheriff, or the chief of police shall be provided to a person who requests it and such information may be released to the public in any manner deemed appropriate, unless the information so received is confidential or exempt from disclosure.

**Section 945.10(1), F.S.** -- Records of the Department of Corrections relating to inmates, as set forth in the exemption, are confidential and exempt and may not be released except as provided in the exemption.

**Section 945.602(7)(b), F.S.** -- Neither the provisions of this section nor those of Ch. 119 or s. 154.207(7) shall apply to any health care provider under contract with the Department of Corrections except to the extent such provisions would apply to any similar entity not under contract with the department.

**Section 945.6032(3), F.S.** -- The findings and recommendations of a medical review committee created by the Correctional Medical Authority or the Department of Corrections pursuant to s. 766.101 are confidential and exempt from s. 119.07(1) and any proceedings of the committee are exempt from s. 286.011.

**Section 946.517, F.S.** -- Proprietary confidential business information, as defined in the statute, of the corporation created to operate correctional work programs is confidential and exempt.

**Section 951.27(2), F.S.** -- Except as otherwise provided in this subsection, serologic blood test results for infectious disease which are obtained pursuant to s. 951.27(1) on inmates in county and municipal detention facilities are confidential and exempt.

**Section 958.07, F.S.** -- The defendant, his attorney, and the state shall be entitled to inspect all factual material contained in the comprehensive presentence report or diagnostic reports prepared or received by the Department of Corrections. The victim may review the report as provided in s. 960.001(1)(g)2. The court may withhold from disclosure to the defendant and his attorney sources of information which have been obtained through a promise of confidentiality.

**Section 960.001(1)(g)2., F.S.** -- Any person who views a presentence investigation report pursuant to this paragraph must maintain the confidentiality of the report and shall not disclose its contents to any person except statements made to the state attorney or the court.

**Section 960.001(8), F.S.** -- Information gained by a crime victim pursuant to this chapter (providing guidelines for fair treatment of victims in the criminal and juvenile justice systems), regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

**Section 960.003(3), F.S.** -- Results of human immunodeficiency virus tests performed pursuant to this section on persons charged with or alleged by delinquency petition with certain offenses are confidential and exempt and may not be disclosed to any person other than the individuals and entities identified in the subsection.

**Section 960.15, F.S.** -- Any record or report obtained by the Department of Legal

Affairs or a hearing officer, pursuant to a claim for crime victim compensation, that is confidential or exempt from s. 119.07(1) shall retain that status and shall not be subject to public disclosure.

**Section 960.28(4), F.S.** -- Information received or maintained by the Department of Legal Affairs identifying an alleged victim who seeks payment of medical expenses under this section is confidential and exempt from s. 119.07(1).

**Section 984.06(3) and (4), F.S.** -- All information obtained pursuant to Ch. 984 (families in need of services and children in need of services) in the discharge of official duty by the officials specified in the subsection shall not be disclosed to anyone other than persons and agencies entitled under the chapter to receive this information or upon court order. Court records required by Ch. 984 are not open to public inspection.

**Section 985.036, F.S.** -- Nothing in this chapter prohibits the victim of the offense or a minor victim's parent or guardian from the right to be informed of, and to be present during, all crucial stages of the proceedings involving the juvenile offender. However, such person may not reveal to any outside party any confidential information obtained under this subsection regarding the case, except as is reasonably necessary to pursue legal remedies. A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense; however, information gained by the victim under this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

**Section 985.04(1), F.S.** -- Except as otherwise provided in this section, all information obtained under this chapter (relating to juvenile justice) in the discharge of official duty by any of the entities set forth in the subsection is confidential and may be disclosed only to the entities specified in the subsection or upon court order. Agencies entering into an agreement to share information about juvenile offenders as authorized by this subsection must comply with s. 943.0525 and must maintain the confidentiality of information otherwise exempt from s. 119.07(1), as provided by law.

**Section 985.04(6), F.S.** -- Records maintained by the Department of Juvenile Justice pertaining to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in cited statutes may not be destroyed for a period of 25 years after the youth's final referral to the department, except in cases of the child's death. However, such record shall be sealed by the court and may be released only to meet screening requirements for personnel in s. 402.3055 and the other mentioned statutes or department rules although sexual offender and predator registration information is a public record.

**Section 985.04(7)(a), F.S.** -- Records in the custody of the Department of Juvenile Justice regarding children are not open to public inspection and may be inspected only upon order of the Secretary of the department or the secretary's authorized agent as provided therein.

**Section 985.045(2), F.S.** -- The clerk of court shall keep all official records required by this section (delinquency) separate from other records of the circuit court, except

those records pertaining to motor vehicle violations, which shall be forwarded to the Department of Highway Safety and Motor Vehicles. Except as provided in ss. 943.053, and 985.04(6)(b) and (7), official records required by this chapter are not open to inspection by the public, but may be inspected only by persons and entities specified in the subsection or deemed by the court to have a proper interest therein. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect, and make abstracts from, official records under whatever conditions upon the use and disposition of such records the court may deem proper and may punish by contempt proceedings any violation of those conditions.

**Section 985.047(2)(a), F.S.** -- Notwithstanding any provision of law to the contrary, confidentiality of records information does not apply to juveniles who have been arrested for an offense that would be a crime if committed by an adult, regarding the sharing of information on such juveniles with the law enforcement agency or county as well as other specified agencies and individuals. Neither these records provided to the law enforcement agency or county nor the records developed from these records for serious habitual juvenile offenders nor the records provided or developed from records provided to the law enforcement agency or county on juveniles at risk of becoming serious habitual juveniles offenders shall be available for public disclosure under s. 119.07.

**Section 985.11, F.S.** -- Except as provided in cited statutes, fingerprints and photographs of juveniles are not available for public disclosure and inspection under s. 119.07(1), except as provided in ss. 943.053 and 985.04(2), but are available to specified entities or to any other person authorized by the court to have access to such records. The records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause.

**Section 985.47(11), F.S.** -- Results of blood and urine tests obtained pursuant to this subsection on serious or habitual juvenile offenders are exempt from disclosure and may be released only to those persons authorized under the section. The assessment and treatment records of such offenders are confidential and exempt from disclosure and may be released only as provided in the subsection. The principles of confidentiality of records as provided in s. 985.04 apply to the assessment and treatment records of serious or habitual juvenile offenders.

**Section 985.483(11), F.S.** -- Serologic blood test and urinalysis results obtained on children who are eligible for the intensive residential treatment program provided in this section for offenders less than 13 years old are confidential and may not be disclosed except as authorized in the section. Assessment and treatment records of such children are confidential and exempt from disclosure and no part of such records may be released except as authorized in the section. The principles of confidentiality of records as provided in s. 985.04 apply to the assessment and treatment records of children who are eligible for an intensive residential treatment program for offenders less than 13 years of age.

**Section 985.534(4) and (5), F.S.** -- The original order of the appellate court in a case affecting a party to a case involving a child under this chapter (delinquency) and all



papers filed in the case on appeal shall remain in the office of the clerk of the court, sealed and not open to inspection except by order of the appellate court. The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled with the initials but not the name of the child.

**Section 1001.24(4), F.S.** -- The identity of donors to a Department of Education direct-support organization, and all information identifying donors and prospective donors, is confidential and exempt from s. 119.07(1) and that anonymity shall be maintained in the auditor's report. All records of the organization other than the auditor's report, management letter, and any supplemental data requested by the Auditor General and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt.

**Section 1001.453(4), F.S.** -- The identity of donors and all information identifying donors and prospective donors are confidential and exempt from s. 119.07(1) and that anonymity shall be maintained in the auditor's report of a district school board direct-support organization.

**Section 1002.22(2), F.S.** -- The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies shall be protected in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, the implementing regulations, and this section. Students and their parents have a right of privacy with respect to their education records and to access such records or challenge the content of such records to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.

**Section 1002.221, F.S.** -- Education records, as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and the federal regulations, are confidential and exempt. An agency, as defined in s. 1002.22(1)(a), or a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4), may not release a student's education records without the written consent of the student or parent except as provided therein or as permitted by the federal act.

**Section 1002.225, F.S.** -- All public postsecondary educational institutions shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, with respect to the education records of students. A public postsecondary educational institution may charge fees for furnishing copies of education records that are requested under this section but may not exceed the actual cost incurred by the institution for producing such copies and may not include the costs of searching for or retrieving the education records.

**Section 1002.36(7)(d), F.S.** -- The criminal records, private investigator findings, and information from reference checks obtained by the Florida School for the Deaf and the Blind for determining the moral character of employees of the school are confidential and exempt from disclosure.

**Section 1002.395(6)(n), F.S.** -- Any and all information and documentation provided to the Department of Education and the Auditor General relating to the identity of a

taxpayer that provides an eligible contribution under this section (Florida Tax Credit Scholarship Program) shall remain confidential at all times in accordance with s. 213.053.

**Section 1002.72, F.S.** -- Except as provided in the exemption, the records of children enrolled in the Voluntary Prekindergarten Education Program are confidential.

**Section 1003.25(1), F.S.** -- The cumulative record of a public school pupil that is required by this section is confidential and exempt from s. 119.07(1) and is open to inspection only as provided in Ch. 1002.

**Section 1003.53(6), F.S.** -- School districts and other agencies receiving information contained in student records and juvenile justice records shall use such information only for official purposes connected with the certification of students for admission to and for the administration of the dropout prevention and academic intervention program, and such agencies shall maintain the confidentiality of such information unless otherwise provided by law or rule. Such information is confidential and exempt from s. 119.07(1).

**Section 1003.57(1)(b), F.S.** -- Hearings on exceptional student placement or denial of placement in special education programs are exempt from s. 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures, and any records created as a result of such hearings are confidential and exempt.

**Section 1004.22(2), F.S.** -- Materials relating to methods of manufacture or production, potential or actual trade secrets, potentially patentable material, business transactions, or proprietary information received, generated, ascertained or discovered during the course of research conducted within state universities are confidential and exempt from s. 119.07(1), except that a division of sponsored research shall make available, upon request, title and description of a research project, name of the researcher, and amount and source of funding for the project.

**Section 1004.24(4), F.S.** -- The claims files of a self-insurance program adopted by the Board of Governors, or the board's designee, pursuant to this section are confidential and exempt from s. 119.07(1), and are only for the use of the program in fulfilling its duties.

**Section 1004.226** -- Materials held by the Florida Technology, Research, and Scholarship Board that relate to manufacture or production methods, trade secrets, patentable material, or proprietary information received or discovered through state university research projects submitted for funding under the State University Research Commercialization Assistance Grant Program; information identifying an investor in projects reviewed by the Board wishing to remain anonymous; or information received from a person, state, nation or Federal Government which is otherwise confidential or exempt under the laws of that state, nation or federal law is confidential and exempt. That portion of a meeting of the Board at which confidential and exempt information is discussed is exempt and any records generated during the exempt meeting are confidential and exempt.

**Section 1004.28(5), F.S.** -- Records of a university direct-support organization other

than the auditor's report, management letter, and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from s. 119.07(1). The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

**Section 1004.30, F.S.** -- Certain records of university health services support organizations are made confidential; however, some records become public records at a specified time in the future. Any portion of a governing board or peer review panel or committee meeting during which a confidential and exempt contract, document, record, marketing plan, or trade secret is discussed is exempt from s. 286.011, as well as any records generated during the closed portion of a governing board or peer review panel or committee meeting which contain information relating to contracts, documents, records, marketing plans, or trade secrets which are made confidential and exempt by this section. A person may petition a court for release of certain documents upon a finding of compelling public interest for release. The organization may petition a court for continued confidentiality upon a showing of good cause.

**Section 1004.43(8), F.S.** -- Proprietary confidential business information, as defined in the subsection, of the not-for-profit corporation organized pursuant to this section for the purpose of operating the H. Lee Moffitt Cancer Center and Research Institute, and the corporation's subsidiaries, is confidential and exempt from disclosure, except that the Auditor General, Office of Program Policy Analysis and Government Accountability, and the Board of Governors must be given access and must maintain the confidentiality of the information so received.

**Section 1004.43(9), F.S.** -- Meetings of the governing body of the not-for-profit corporation operating the H. Lee Moffitt Cancer Center and Research Institute, or its subsidiaries are exempt from open meeting requirements except that meetings at which expenditures of dollars appropriated to the corporation by the state are discussed must remain open to the public.

**Section 1004.4472, F.S.** -- Specified materials held by the Florida Institute for Human and Machine Cognition, Inc., or its subsidiary, including certain donor information, as well as trade secrets, patentable material, proprietary information received or generated from research, and exempt information received from other states or the federal government, are confidential and exempt from disclosure requirements. Portions of meetings where confidential information is discussed are exempt from open meetings requirements.

**Section 1004.45(2)(h), F.S.** -- Information that, if released, would identify donors who desire to remain anonymous, is confidential and exempt. Information which, if released, would identify prospective donors to the museum is confidential and exempt unless the direct-support organization has obtained the name from another source. Identities of such donors and prospective donors shall not be revealed in the auditor's report.

**Section 1004.70(6), F.S.** -- Records of community college direct-support

organizations other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability are confidential and exempt from s. 119.07(1). The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

**Section 1004.71(6), F.S.** -- The identity of a donor or prospective donor to a statewide community college direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor are confidential and exempt from disclosure. Such anonymity shall be maintained in the auditor's report.

**Section 1004.78(2), F.S.** -- Materials relating to methods of manufacture or production, potential or actual trade secrets, potentially patentable material, business transactions, or proprietary information received, generated, ascertained or discovered during the course of activities conducted within a community college are confidential and exempt from s. 119.07(1) provided that a community college shall make available, upon request, the title and description of a project, the name of the investigator and the amount and source of the funding provided for the project.

**Section 1005.36(3), F.S.** -- Confidentiality of student records of closed nonpublic postsecondary institutions which are furnished to the Commission for Independent Education in accordance with this section shall be maintained, to the extent required by law.

**Section 1005.38(6), F.S.** -- Investigatory records held by the Commission for Independent Education are exempt from public disclosure requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause. Those portions of meetings of the probable cause panel at which exempt records are discussed are exempt from open meetings requirements but must be recorded. The recording of a closed portion of a meeting and the minutes and findings of such meeting are exempt from disclosure for a period not to exceed 10 days after the panel makes a determination regarding probable cause.

**Section 1006.07(1)(a), F.S.** -- Student expulsion hearings are exempt from s. 286.011. However, the student's parent must be given notice of the Sunshine Law and may elect to have the hearing held in compliance with that section.

**Section 1006.52(1), F.S.** -- Each public postsecondary educational institution may prescribe the content and custody of records which the university may maintain on its students. A student's education records, as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and the federal regulations, and applicant records as defined by this section are confidential and exempt.

**Section 1006.52(2), F.S.** -- A public postsecondary educational institution may not release a student's education records without the written consent of the student to any individual, agency, or organization, except as permitted by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, or to the Auditor General or the Office of

Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities as provided in the statute.

**Section 1008.23, F.S.** -- All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed or administered pursuant to cited statutes, shall be confidential and exempt from s. 119.07, and from s. 1001.52.

**Section 1008.24(3)(b), F.S.** -- The identity of a school or postsecondary educational institution, the personally identifiable information of any personnel of any school district or postsecondary educational institution, or any specific allegations of misconduct obtained or reported pursuant to an investigation conducted by the Department of Education of a testing impropriety are confidential and exempt until the conclusion of the investigation or until such time as the investigation ceases to be active.

**Section 1008.345(7)(h), F.S.** -- Tests and related documents developed to measure and diagnose student achievement of college- level communication and mathematics skills are exempt from s. 119.07(1).

**Section 1008.39(3), F.S.** -- The Florida Education and Training Placement Information Program must not make public any information that could identify an individual or the individual's employer.

**Section 1008.41(1)(b), F.S.** -- Uniform management information systems for workforce education coordinated by the Commissioner of Education pursuant to this section must provide for compliance with state and federal confidentiality requirements except that the department shall have access to certain unemployment reports to collect and report placement data about former students. Such placement reports must not disclose the individual identities of former students.

**Section 1009.98(6), F.S.** -- Information that identifies the purchasers or beneficiaries of a prepaid college plan and their advance payment account activities is exempt from s. 119.07(1). Information which is authorized to be released to postsecondary institutions shall be maintained as exempt from s. 119.07(1).

**Section 1009.981(6), F.S.** -- Information that identifies the benefactors or the designated beneficiary of any account initiated pursuant to the Florida College Savings Program is confidential and exempt from public disclosure requirements. However, the board is authorized to release such information to a community college, college, or university in which a designated beneficiary may enroll or is enrolled. The receiving institution shall maintain the confidentiality of such information.

**Section 1009.983(4), F.S.** -- The identity of donors who desire to remain anonymous shall be confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report of the direct-support organization of the Florida Prepaid College Program. Information received by the direct-support organization that is otherwise confidential or exempt shall retain such status and any sensitive, personal information regarding contract beneficiaries, including their identities, is exempt from

disclosure.

**Section 1012.31(3), F.S.** -- Public school system employee personnel files are subject to the provisions of s. 119.07(1) except that any complaint and material relating to the investigation of a complaint against an employee is confidential and exempt until the conclusion of the preliminary investigation or until the preliminary investigation ceases to be active; employee evaluations are confidential until the end of the school year immediately following the school year during which the evaluation was made, but no evaluations made prior to July 1, 1983, shall be made public; payroll deduction records of the employee and medical records are confidential and exempt. However, an employee's personnel file shall be open at all times to the officials designated in the subsection.

**Section 1012.56(1), F.S.** -- Disclosure of the social security number of an applicant for certification which is submitted to the Department of Education is limited to child support enforcement purposes.

**Section 1012.56(9)(e), F.S.** -- For any examination developed by this state, the Department of Education and the State Board of Education shall maintain confidentiality of the examination, developmental materials, and workpapers, which are exempt from s. 119.07(1).

**Section 1012.56(9)(g), F.S.** -- Examination instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to this section are confidential and exempt from s. 119.07(1) and from s. 1001.52. Provisions governing access to, maintenance of, and destruction of such instruments and related materials shall be prescribed by rules of the State Board of Education.

**Section 1012.796(4), F.S.** -- The complaint against a teacher or administrator and all information obtained pursuant to the investigation by the Department of Education shall be confidential and exempt from s. 119.07(1) until the conclusion of the preliminary investigation, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6). However, the complaint and all material assembled during the investigation may be inspected and copied by the certificate holder or the certificate holder's designee, after the investigation is concluded, but prior to the determination of probable cause.

**Section 1012.798(9), F.S.** -- Information obtained by the recovery network program (established within the Department of Education to assist impaired educators) from a treatment provider which relates to a person's impairment and participation in the program is confidential and exempt from disclosure.

**Section 1012.798(11), F.S.** -- Medical records released pursuant to paragraph (8)(e) of this section relating to the impaired educators recovery network program may be disclosed only to the entities specified only as required for purposes of this section, or as otherwise authorized by law. The medical records are confidential and exempt from disclosure.

**Section 1012.81, F.S.** -- Rules of the State Board of Education shall prescribe the content and custody of limited-access records which a community college may maintain on its employees. Such records are limited to information reflecting evaluations of employee performance and are open to inspection only by the employee and officials of the college responsible for supervising the employee. Such limited access employee records are confidential and exempt from s. 119.07(1). The custodian of limited access employee records may release information from such records only as authorized in the section.

**Section 1012.91, F.S.** -- Each university board of trustees shall adopt rules prescribing the content and custody of limited-access records maintained on its employees. Such limited-access records are limited to the records described in the section. Limited access records are confidential and exempt from s. 119.07(1) and may not be released except as authorized in the section. For more information, please see the discussion on university personnel records found at Part II section I.2.b. The page number may be found in the Table of Contents.

**Section 1013.14(1)(a), F.S.** -- In any case where a board, pursuant to the provisions of Ch. 1013, seeks to purchase real property for educational purposes, all appraisals, offers, or counteroffers are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board. If a contract or agreement for purchase is not submitted to the board for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end.

## **E. RULE 2.420, PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS, FLA. RULES OF JUDICIAL ADMINISTRATION**

(a) Scope and Purpose. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below.

(b) Definitions.

(1) "Records of the judicial branch" are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

(A) "court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and

(B) "administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

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

(3) "Custodian." The custodian of all administrative records of any court is the chief justice or chief judge of that court, except that each judge is the custodian of all records that are solely within the possession and control of that judge. As to all other records, the custodian is the official charged with the responsibility of maintaining the office having the care, keeping, and supervision of such records. All references to "custodian" mean the custodian or the custodian's designee.

(4) "Confidential," as applied to information contained within a record of the judicial branch, means that such information is exempt from the public right of access under article I, section 24(c) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term "exempt" means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. To the extent reasonable practicable, restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.



(5) "Affected non-party" means any non-party identified by name in a court record that contains confidential information pertaining to that non-party.

(c) Confidential and Exempt Records. The following records of the judicial branch shall be confidential:

(1) Trial and appellate court memoranda, drafts of opinions and orders, court conference records, notes, and other written materials of a similar nature prepared by judges or court staff acting on behalf of or at the direction of the court as part of the court's judicial decision-making process utilized in disposing of cases and controversies before Florida courts unless filed as a part of the court record;

(2) Memoranda or advisory opinions that relate to the administration of the court and that require confidentiality to protect a compelling governmental interest, including, but not limited to, maintaining court security, facilitating a criminal investigation, or protecting public safety, which cannot be adequately protected by less restrictive measures. The degree, duration, and manner of confidentiality imposed shall be no broader than necessary to protect the compelling governmental interest involved, and a finding shall be made that no less restrictive measures are available to protect this interest. The decision that confidentiality is required with respect to such administrative memorandum or written advisory opinion shall be made by the chief judge;

(3) (A) Complaints alleging misconduct against judges until probable cause is established;

(B) Complaints alleging misconduct against other entities or individuals licensed or regulated by the courts, until a finding of probable cause or no probable cause is established, unless otherwise provided. Such findings should be made within the time limit set by law or rule. If no time limit is set, the findings should be made within a reasonable period of time;

(4) Periodic evaluations implemented solely to assist judges in improving their performance, all information gathered to form the bases for the evaluations, and the results generated therefrom;

(5) Only the names and qualifications of persons applying to serve or serving as unpaid volunteers to assist the court, at the court's request and direction, shall be accessible to the public. All other information contained in the applications by and evaluations of persons applying to serve or serving as unpaid volunteers shall be confidential unless made public by court order based upon a showing of materiality in a pending court proceeding or upon a showing of good cause;

(6) Copies of arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until execution of said warrants or until a determination is made by law enforcement authorities that execution cannot be made;

(7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;

(8) All records presently deemed to be confidential by court rule, including the Rules

for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A) confidentiality is required to

(i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(ii) protect trade secrets;

(iii) protect a compelling governmental interest;

(iv) obtain evidence to determine legal issues in a case;

(v) avoid substantial injury to innocent third parties;

(vi) 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 proceeding sought to be closed;

(vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;

(B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A) and

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A).

(10) The names and any identifying information of judges mentioned in an advisory opinion of the Judicial Ethics Advisory Committee.

(d) Procedures for Determining Confidentiality of Court Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule; and

(B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or renumbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. s. 39.0132(3), Fla. Stat.

(ii) Adoption records. s. 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit, and credit card numbers in court records. s. 119.07(1)(i)-(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.

(iv) HIV test results and patient identity within those test results. s. 381.004(3)(e), Fla. Stat.

(v) Sexually transmitted diseases - test results and identity within the test results when provided by the Department of Health or the department's authorized representative. s. 384.29, Fla. Stat.

(vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. ss. 382.008(6), 382.025(1)(a), Fla. Stat.

(vii) Identifying information in a petition by a minor for waiver of parental notice when seeking to terminate pregnancy. s. 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. s. 3394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. s. 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. s. 916.107(8), Fla. Stat.

(xi) Estate inventories and accountings. s. 733.604(1), Fla. Stat.

(xii) The victim's address in a domestic violence action on petitioner's request. s. 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. ss. 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. s. 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. ss. 744.1076, 744.3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. s. 948.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. ss. 985.04(1), 985.045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and records of the Department of Health in suspected tuberculosis cases. ss. 392.545, 392.65, Fla. Stat.

(2) Any person filing any document containing confidential information shall, at the

time of filing, file with the clerk a "Notice of Confidential Information within Court Filing" in order to: (A) indicate that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed; (B) identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information; and (C) identify the precise location of the confidential information within the document being filed. A form Notice of Confidential Information within Court Filing accompanies this rule. The clerk of court shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is factually subject to confidentiality under the identified provision in subdivision (d)(1)(B). If the clerk determines that filed information is not subject to confidentiality under the identified provision, the clerk shall notify the person who filed the document within 5 days of the filing and thereafter shall maintain the information as confidential for 10 days from the day such notice is served. The information shall not be held as confidential for more than 10 days, unless the filer has filed a motion pursuant to subdivision (d)(3).

(3) Any person filing a document with the court shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule notwithstanding that such information is not itemized at subdivision (d)(1) of this rule. A person filing information that he or she believes in good faith to be confidential but that is not described in subdivision (d)(1) of this rule shall request that the information be maintained as confidential by filing a "Motion to Determine Confidentiality of Court Records" under the procedures set forth in subdivision (e), (f), or (g), under (A) the person filing the information is the only individual whose confidential information is included in the document to be filed or is the attorney representing all such individuals; and (B) a knowing waiver of the confidential status of that information is intended by the person filing the information. Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e), (f), or (g).

(4) If a notice of confidential information is filed pursuant to subdivision (d)(2) or a motion is filed pursuant to subdivision (e)(1) seeking to determine that information contained in court records is confidential, or pursuant to subdivision (e)(5) seeking to vacate an order that has determined that information in a court record is confidential or seeking to unseal information designated as confidential by the clerk of court, then the person filing the notice or motion shall give notice of such filing to any affected non-party. Notice pursuant to this provision must:

(A) be filed with the court;

(B) identify the case by docket number;

(C) describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court record; and

(D) include:

(i) in the case of a request to deem materials confidential, a statement that if the motion is denied then the subject material will not be treated as confidential by the clerk;

and

(ii) in the case of a motion to unseal confidential records or a motion to vacate an order deeming records confidential, a statement that if the motion is granted the subject material will no longer be treated as confidential by the clerk.

Any notice described herein must be served together with the motion that gave rise to the notice in accordance with subdivision (e)(5) or (g)(6). When serving the notice and motion described in this subdivision on a non-party, the server shall use reasonable efforts to locate the non-party and may serve such non-party by any method set forth in Florida Rule of Civil Procedure 1.080(b).

(e) Request to Determine Confidentiality of Trial Court Records in Noncriminal Cases.

(1) A request to determine the confidentiality of trial court records in noncriminal cases under subdivision (c) must be made in the form of a written motion captioned "Motion to Determine Confidentiality of Court Records." A motion made under this subdivision must:

(A) identify the particular court records or a portion of a record that the movant seeks to have determined as confidential with as much specificity as possible without revealing the information subject to the confidentiality determination; and

(B) specify the bases for determining that such court records are confidential; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is made in good faith and is supported by a sound factual and legal basis. Information that is subject to such a motion must be treated as confidential by the clerk pending the court's ruling on the motion. Notwithstanding any of the foregoing, the court may not determine that the case number, docket number, or other number used by the clerk's office to identify the case file is confidential.

(2) Except when a motion filed under subdivision (e)(1) represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing before ruling on the motion. Whether or not any motion filed under subdivision (e)(1) is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any party person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c). Any person may request expedited consideration of and ruling on the motion. The moving party shall be responsible for ensuring that a complete record of any hearing held pursuant to this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of

the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision (e)(4) or by providing such other public notice as the court deems appropriate. The court must issue a ruling on the motion within 30 days of the hearing.

(3) Any order granting in whole or in part a motion filed under subdivision (e) must state the following with as much specificity as possible without revealing the information subject to the confidentiality determination:

(A) The type of case in which the order is being entered;

(B) The particular grounds under subdivision (c) for determining the information confidential;

(C) Whether any party's name is determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are determined to be confidential;

(E) The particular information that is determined to be confidential;

(F) Identification of persons who are permitted to view the confidential information;

(G) That the court finds that:

(i) the degree, duration, and manner of confidentiality ordered by the court are no broader than necessary to protect the interests set forth in subdivision (c); and

(ii) no less restrictive measures are available to protect the interests set forth in subdivision (c); and

(H) That the clerk of the court is directed to publish the order in accordance with subdivision (e)(4).

(4) Except as provided by law or court rule, notice must be given of any order granting in whole or in part a motion made under subdivision (e)(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website and in a prominent, public location in the courthouse. The order must remain posted in both locations for no less than 30 days. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (e), or requests that the court order the unsealing of records designated as confidential under subdivision (d), the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties and all affected non-parties with a copy of the motion. If the subject order determines that the names or addresses of one or more parties are confidential, the movant must state prominently in the caption

of the motion "Confidential Party -- Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to all parties and all affected non-parties in such a way as not to reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must, as soon as practicable but not later than 30 days after the filing of a motion under this subdivision, hold a hearing on the motion. Regardless of whether any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any person may request expedited consideration of and ruling on the motion. Any hearing held under this subdivision must be an open proceeding, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c). The court must issue a ruling on the motion within 30 days of the hearing. The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) of (c)(8).

(6) After notice and an opportunity to respond, the court may impose sanctions against any party or non-party and/or their attorney if:

(A) the court determines that a designation made under subdivision (d) or a motion made under subdivision (d)(3) or (e) was not made in good faith and was not supported by a sound legal or factual basis, or

(B) a document is filed in violation of subdivision (d)(2) or (d)(3).

(f) Request to Determine Confidentiality of Court Records in Criminal Cases.

(1) Subdivision (e) shall apply to any motion by the state or a defendant to determine the confidentiality of trial court records under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the trial court under subdivision (f)(3), the following procedure shall apply:

(A) Unless the motion represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion. Any hearing held under this subdivision must be an open proceeding, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A).

(B) The court shall issue a written ruling on a motion filed within this subdivision within 10 days of the hearing on a contested motion or within 10 days of the filing of an agreed motion.

(2) Subdivision (g) shall apply to any motion to determine the confidentiality of appellate court records under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the appellate court under subdivision (f)(3), the following procedure shall apply:

(A) The motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(B) A response to a motion filed under this subdivision may be served within 10 days of service of the motion.

(C) The court shall issue a written ruling on a motion filed under this subdivision within 10 days of the filing of a response on a contested motion or within 10 days of the filing of an uncontested motion.

(3) Any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court records that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(viii) of this rule may be made in the form of a written motion captioned "Motion to Determine Confidentiality of Court Records." Any motion made pursuant to this subdivision must be treated as confidential and indicated on the docket by generic title only, pending a ruling on the motion or further order of the court. As to any motion made under this subdivision, the following procedures shall apply:

(A) Information that is the subject of such motion must be treated as confidential by the clerk pending the court's ruling on the motion. Filings containing the information must be indicated on the docket in a manner that does not reveal the confidential nature of the information.

(B) The provisions of subdivisions (e)(3)(A)-(G), (e)(6), and (g)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of a motion in accordance with the procedures set forth under this subdivision. In the event of an appeal or review of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal or review proceeding.

(D) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (e)(4) or (g)(4) unless directed by the court. The docket shall indicate only the entry of the order.

(4) This subdivision does not authorize the falsification of court records or progress dockets.

(g) Request to Determine Confidentiality of Appellate Court Records in Noncriminal Cases.



(1) A motion to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (e)(1). Such a motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (g)(1) may be served within 10 days of service of the motion.

(3) Any order granting in whole or in part a motion filed under subdivision (g)(1) must be in compliance with the guidelines set forth in subdivisions (e)(3)(A)-(H). Any order requiring the sealing of an appellate court record operates to also make those same records confidential in the lower tribunal during the pendency of the appellate proceeding.

(4) Except as provided by law, within 10 days following the entry of an order granting a motion under subdivision (g)(1), the clerk of the appellate court must post a copy of the order on the clerk's website and must provide a copy of the order to the clerk of the lower tribunal, with directions that the clerk is to seal the records identified in the order. The order must remain posted for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (g)(3), or requests that the court order the unsealing of records designated as confidential under subdivision (d), the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties and all affected non-parties with a copy of the motion. If the subject order determines that the names or addresses of one or more parties are confidential, the movant must state prominently in the caption of the motion "Confidential Party -- Court Service Request." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to all parties and all affected non-parties in such a way as not to reveal the confidential information to the movant. A response to a motion may be served within 10 days of service of the motion.

(6) The party seeking to have an appellate record sealed under this subdivision has the responsibility to ensure that the clerk of the lower tribunal is alerted to the issuance of the order sealing the records and to ensure that the clerk takes appropriate steps to seal the records in the lower tribunal.

(7) Upon conclusion of the appellate proceeding, the lower tribunal may, upon appropriate motion showing changed circumstances, revisit the appellate court's order directing that the records be sealed.

(8) If the court determines that a designation made under subdivision (d) or a motion made under subdivision (g)(1) was not made in good faith and was not supported by a sound legal or factual basis, the court may impose sanctions on the movant after notice and an opportunity to respond.

(9) Records of a lower tribunal determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where information has been determined to be confidential under this rule, the clerk of the lower tribunal shall so indicate in the index transmitted to the appellate court. If the information was determined to be confidential in an order, the clerk's index must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, under Florida Rule of Appellate Procedure 9.100(d), or affect the standard of review by an appellate court, of an order by a lower tribunal determining a record to be confidential.

(h) Denial of Access Request for Administrative Records. Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus or other appropriate relief in the following manner:

(1) Where a judge who has denied a request for access to records is the custodian, the action shall be filed in the court having appellate jurisdiction to review the decisions of the judge denying access. Upon order issued by the appellate court, the judge denying access to records shall file a sealed copy of the requested records with the appellate court.

(2) All other actions under this rule shall be filed in the circuit court of the circuit in which such denial of access occurs.

(i) Procedure. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1) Requests for access to records shall be in writing and shall be directed to the custodian. The request shall provide sufficient specificity to enable the custodian to identify the requested records. The reason for the request is not required to be disclosed.

(2) The custodian shall be solely responsible for providing access to records of the custodian's entity. The custodian shall determine whether the requested record is subject to this rule and, if so, whether the record or portions of the record are exempt from disclosure. The custodian shall determine the form in which the record is provided. If the request is denied, the custodian shall state in writing the basis for the denial.

(3) Fees for copies of records in all entities in the judicial branch of government, except for copies of court records, shall be the same as those provided in section 119.07, Florida Statutes (2001).

## **F. SECTION 11.0431, FLORIDA STATUTES - LEGISLATIVE RECORDS; EXEMPTIONS FROM PUBLIC DISCLOSURE**

### **11.0431 Legislative records; intent of legislation; exemption from public disclosure.--**

(1) It is the policy of the Legislature that every person has the right to inspect and copy records of the Senate and the House of Representatives received in connection with the official business of the Legislature as provided for by the constitution of this state. To that end, public records shall be open to personal inspection and copying at reasonable times except when specific public necessity justifies that public records be exempt from such inspection and copying.

(2) The following public records are exempt from inspection and copying:

(a) Records, or information contained therein, held by the legislative branch of government which, if held by an agency as defined in s. 119.011, or any other unit of government, would be confidential or exempt from the provisions of s. 119.07(1), or otherwise exempt from public disclosure, and records or information of the same type held by the Legislature.

(b) A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.

(c) A legislatively produced draft, and a legislative request for a draft, of a bill, resolution, memorial, or legislative rule, and an amendment thereto, which is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a member of the Legislature who is a supervisor of the legislative employee, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

(d) A draft of a bill analysis or fiscal note until the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

(e) A draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.

(f) Records prepared for or used in executive sessions of the Senate until 10 years after the date on which the executive session was held.

(g) Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any

witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.

(h) Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics, unless the member requesting the opinion authorizes in writing the release of such information. All advisory opinions shall be open to inspection except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.

(i) Portions of correspondence held by the legislative branch which, if disclosed, would reveal: information otherwise exempt from disclosure by law; an individual's medical treatment, history, or condition; the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.

(3) Any record created prior to July 1, 1993, which was not available to the public from the house, commission, committee, or office of the legislative branch that created the record, is exempt from inspection and copying until July 1, 1993. Prior to July 1, 1993, the presiding officer of each house shall determine which records held by that house should remain exempt from inspection and copying. The presiding officers of both houses shall jointly determine which records held by joint committees should remain exempt from inspection and copying. No later than July 1, 1993, the presiding officers shall publish a list of records that remain exempt from inspection and copying.

(4) For purposes of this section, "public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.

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

## **G. TABLE OF CASES (GOVERNMENT- IN-THE-SUNSHINE LAW AND THE PUBLIC RECORDS ACT)**

**(s) denotes case cited in Part I, Sunshine Law**

**(pr) denotes case cited in Part II, Public Records Act**

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*Alston v. City of Riviera Beach*, 882 So. 2d 436 (Fla. 4th DCA 2004) (pr)

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*Barfield v. Orange County*, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992) (pr)

*Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996) (pr)

*Barron v. Florida Freedom Newspapers*, 531 So. 2d 113 (Fla. 1988) (s), (pr)

*Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980) (pr)

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