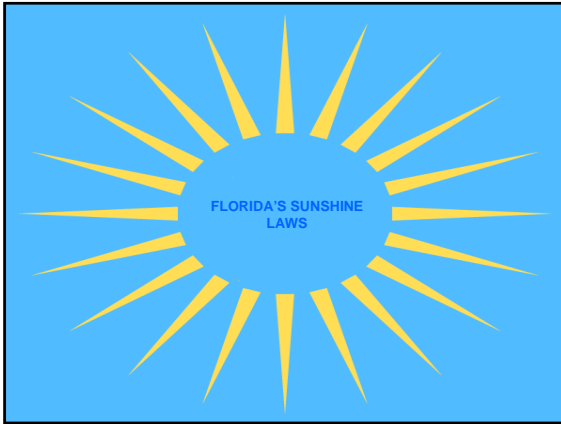


# GOVERNMENT IN THE SUNSHINE



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**Florida's "Sunshine Laws" have both a STATUTORY and CONSTITUTIONAL basis....**

**Article I, Section 24**

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of 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(c), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

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**Section 286.011, Florida Statutes**

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.

These requirements apply to.....

- Civil service boards
- County and municipal boards
- Interlocal agreement boards
- Special district boards

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# GOVERNMENT IN THE SUNSHINE

## What constitutes a meeting?

The Sunshine 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

## Is a quorum necessary?

A quorum is not necessary. Again, two or more members constitutes a "meeting."



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## It is the how and the why officials decided to so act which interests the public, not merely the final decision.

"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."

Times Publishing Company v. Williams, 222 So. 2d 470, 473 (Fla. 2d DCA 1968)

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## What about written correspondence between board, commission or council members?

The use of a written report by one commissioner to inform other commissioners of a subject which will be discussed at a public meeting is not a violation of the Sunshine Law if prior to the meeting, there is no interaction related to the report among the commissioners.

*Note: Do not express an opinion!!!*

**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. Gradston, 296 So. 2d 473, 477 (Fla. 1974).

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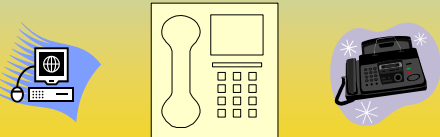
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# GOVERNMENT IN THE SUNSHINE

## What about discussions conducted via telephones, computers, or other electronic means?

The Sunshine Law applies to the deliberations and discussions between two or more members of a board or commission on an issue that they will take action on. The use of a telephone, fax, computer, text messaging, etc. are subject to Sunshine Laws.



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## What if the Commission or Board assigns their responsibilities to non-elected or non-appointed persons?

"The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego."

### However...

"... 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."

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## Government by delegation

**Example:** a duty of a zoning board of adjustments, such as the hearing of a variance, is delegated to a single hearing officer.



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# GOVERNMENT IN THE SUNSHINE

**What are the statutory exceptions to the Sunshine Law?**

**For City Commissions and Boards, assume there are none unless your attorney says otherwise.....but by way of example:**

- Abuse meetings
- Collective bargaining
- Hearings involving minors
- Hospital peer review panels

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**What are the consequences if we violate the Sunshine Law?**



Misdemeanor of the second degree:  
Up to 60 days in jail and / or \$500.00 fine

**REMOVAL FROM OFFICE**

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## **PUBLIC RECORDS REQUESTS**



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# GOVERNMENT IN THE SUNSHINE

## Florida Statutes, Chapter 119

"Requires that an agency in custody of a public record must permit the record to be inspected by any person, in a reasonable place, at a reasonable time, and under supervision." [§119.07(1), F.S.]

### What's a "public record?"

"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."

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## Who's subject to the Public Records Act?

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.

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## What kinds of agency records are subject to the Public Records Act?

- Computer records: *e.g., calendars, databases, word files, etc.*
- E-mail: *don't assume that an e-mail not in regards to public business is exempt\**
- Election records
- Financial records
- Audit reports
- Agency telephone calls

\*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).

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# GOVERNMENT IN THE SUNSHINE

## Can we regulate or limit inspection and copying of Public Records?

### *Important enough to repeat*

"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."



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## What's "Reasonable?"

"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."

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Can we 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**

Can we refuse to allow access to public records on the grounds that the records are also maintained by another agency? **No.**

Can we refuse to allow inspection or copying of public records on the grounds that the request for such records is "overbroad" or lacks particularity? **No.**

Can we require that a request to examine or copy public records be made in writing? **No.**

Does a person requesting information have to tell us who they are? **No.**

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# GOVERNMENT IN THE SUNSHINE

## How long is a "reasonable" time frame for producing or copying records?

State law requires that the custodian of public records or his or her designee to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. **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.**

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## Can we charge for copying services?

- Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches;
- No more than an additional 5 cents for each two-sided copy; and
- For all other copies, the "actual cost of duplication" of the public record.
- 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.
- An agency may charge up to \$1 per copy for a certified copy of a public record.

***"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.***

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## Are there any statutory exemptions from F.S. 119 requests?

- Sealed bids: until 10 days after the bid opening
- Certain documents prepared at the request of your attorney – **your attorney will determine this**
- Certain software under licensing agreement that is trade secret (s. 821.081, F.S.) – **the key word being "certain"; you do not automatically get to hide behind the word "proprietary"**
- Certain building and facility diagrams, schematics, etc. for security purposes (named examples include arenas, h2o treatment facility) – **these are defined in statute**
- Security system plans
- Employee social security records
- Certain personnel information such as addresses, etc. (firefighters, human resources officials, police officers, judges, and code enforcement officers – **this list is not exhaustive**)

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# GOVERNMENT IN THE SUNSHINE

**Things worth noting:**

- If the volume of documents requested requires clerical staff time, this may be charged (s. 119.07(4)(d), F.S.)
- You are not required to convert formats upon request
- Be consistent with your fee schedule.
- The statute does not lend itself to hair splitting or semantics.

**Big thing worth noting:**

State takes F.S. 119 requests very seriously. Violations range from first degree misdemeanors to a felony.

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