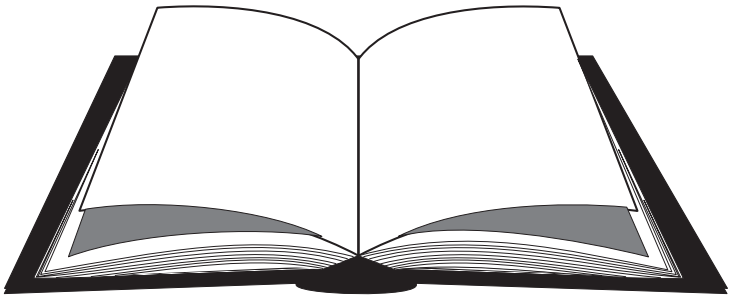
GOVERNMENT-IN-THE-SUNSHINE MANUAL



2024 Edition

A Reference For Compliance with Florida's Public Records and Open Meetings Laws

Florida Office of the Attorney General

Volume 46

Introduction xii
2023 Legislative Highlights xiii

PART I
GOVERNMENT IN THE SUNSHINE LAW

A. SCOPE OF THE SUNSHINE LAW 1

B. WHAT ENTITIES ARE COVERED BY THE SUNSHINE LAW? APPLICATION OF THE SUNSHINE LAW TO: 1
1. Advisory boards 1
a. Advisory boards created by a single public official 2
b. Fact-finding committees 3
c. Staff committees 4
2. Candidates or members-elect 6
a. Candidates 6
b. Members-elect 6
3. Commissions created by the Florida Constitution 6
4. Ex officio board members 7
5. Federal entities 7
6. Governor and Cabinet 7
7. Individual board members 8
a. Individual board member meeting with a member of another public board 8
b. Mayor meeting with city commissioner or city council member 9
c. Use of nonboard members or staff to act as liaisons or to conduct a de facto meeting of the board 9
d. Delegation of authority to individual to act on behalf of the board 11
8. Judiciary 12
a. Criminal proceedings 12
b. Civil proceedings 13
c. Depositions 13
d. Florida Bar grievance proceedings 14
e. Grand juries 14
f. Judicial nominating commissions/Judicial Qualifications Commission 14
g. Mediation proceedings 15
(1) Court-ordered mediation 15
(2) Other mediation proceedings 15
h. Statutes providing for closed court proceedings 16
(1) Adoption 16
(2) Dependency 16
(3) Guardian advocate appointments 16
(4) HIV test results 16
(5) Pregnancy termination notice waiver 16
(6) Termination of parental rights 16
(7) Victim and witness testimony in certain circumstances 16
9. Legislature 17
10. Married couple serving on the same board 17
11. Private organizations 17
a. Private entities created pursuant to law or by public agencies 17
b. Private entities providing services to public agencies 18
c. Application of the Sunshine Law to specific private entities 19
(1) Direct-support organizations 19
(2) Economic development organizations 19
(3) Homeowners' associations 20
(4) Political parties 20

(5) Volunteer fire departments 20
12. Staff member or public official also serving as member of public board 20

C. WHAT MEETINGS OF MEMBERS OF BOARDS ARE COVERED? APPLICATION OF THE SUNSHINE LAW TO: 21
1. Board members attending meetings or serving as members of another public board....21
a. Board members attending meetings of another public board 21
b. Board members serving as members of another public board....21
2. Board member meeting with his or her alternate 22
3. Community forums sponsored by private organizations 22
4. Confidential records discussions 22
5. E-mail, text messages, and other written communications between board members..23
6. Fact-finding or inspection trips....25
7. Informal discussions, workshops, organizational sessions, election of officers....25
8. Investigative meetings....26
9. Litigation meetings....27
a. Settlement negotiations or strategy sessions related to litigation expenditures ..27
(1) Strict compliance with statutory conditions....27
(2) Permitted discussions during closed session 28
(3) Entity involved in *pending* litigation 29
(4) Persons authorized to attend closed session....30
(5) Determination of "conclusion" of the litigation 30
b. Risk management exemption 31
10. Personnel matters 31
a. Collective bargaining discussions....31
(1) Strategy sessions 31
(2) Negotiations....32
b. Disciplinary, grievance, and complaint review proceedings 32
c. Evaluations....34
d. Selection and screening committees....34
11. Purchasing meetings....35
a. Application of Sunshine Law....35
b. Recording requirement for exempt meetings 35
12. Quasi-judicial matters, proceedings, or hearings....36
13. Real property negotiations....36
14. Security meetings 36
15. Social events....37
16. Telephone conversations and virtual meetings 37
a. Private phone conversations....37
b. Authorization to conduct and participate in public meetings via teleconferencing, video conferencing, or other electronic media 37
(1) Sunshine Law....37
(2) In-person quorum requirements....38
(a) State boards....38
(b) Local boards 38
(1) Meetings 38
(2) Workshops 39

D. NOTICE AND PROCEDURES 40
1. Agenda....40
2. Location of meetings....40
a. Facilities that discriminate or unreasonably restrict access 40
b. Luncheon meetings....41
c. Out-of-town meetings....41
d. Size of meeting facilities 42

3. Minutes....42
a. Scope of minutes requirement....42
b. Content of minutes....43
c. Tape recording or Internet archive as minutes....43
d. Use of transcript as minutes....44
4. Notice requirements....44
a. Reasonable notice....44
b. Notice requirements when meeting adjourned to a later date....45
c. Notice relating to record needed for appellate review....46
d. Paid advertising requirements and additional notice provisions imposed by other statutes, codes, or ordinances....46
5. Public comment....46
6. Restrictions on public attendance....48
a. Cameras and tape recorders....48
b. Exclusion of certain members of the public....48
c. Inaudible discussions....49
7. Time and length of meeting....49
8. Use of codes or preassigned numbers in order to avoid identifying individuals....49
9. Voting....49
a. Abstention....49
b. Proxy votes....50
c. Roll call votes....50
d. Written or secret ballots....50

E. STATUTORY EXEMPTIONS....51
1. Creation and review of exemptions....51
2. Exemptions are narrowly construed....51
3. Effect of statutory exemptions....52
a. Notice requirements....52
b. Attendance at closed meetings....52
c. Disclosure of matters discussed at closed meetings....53
4. Special act exemptions....53

F. REMEDIES AND PENALTIES....53
1. Criminal penalties....53
2. Removal from office....53
3. Noncriminal infractions....54
4. Attorney's fees....54
5. Civil actions for injunctive or declaratory relief....55
6. Validity of action taken in violation of the Sunshine Law and subsequent corrective action....56
7. Damages....59

PART II
PUBLIC RECORDS

A. SCOPE OF THE PUBLIC RECORDS ACT....59

B. WHAT ENTITIES ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:....60
1. Advisory boards....60
2. Private organizations....60
a. Private entities created pursuant to law or by public agencies....61
b. Private entities contracting with public agencies or receiving public funds....61
(1) "Totality of factors" test....62

(2) "Delegation of function" test....63
c. Private company delegated authority to keep certain records....65
d. Subcontractors....65
e. Other statutory provisions governing records of private entities....65
(1) Contract requirements....65
(2) Legislative appropriation....66
(3) Public funds used for dues....66
3. Judiciary....66
a. Public Records Act inapplicable to judicial records....66
b. Public access to and protection of judicial branch records, Fla. R. Gen. Prac. & Jud. Admin. 2.420....67
(1) Scope of the rule....67
(2) Confidential judicial records....67
(3) Procedures for accessing judicial branch records under rule 2.420....68
c. Discovery material....69
d. Florida Bar....69
e. Judicial Qualifications Commission and judicial nominating commissions....69
f. Jury records....70
(1) Grand jury....70
(2) Trial jury....71
g. Sunshine in Litigation Act....71
4. Legislature....72
5. Governor and Cabinet....72
6. Commissions created by the Constitution....73

C. WHAT RECORDS ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:....73
1. Adoption and birth records....73
2. Autopsy and death records....74
a. Autopsy reports....74
b. Autopsy photographs and recordings....74
c. Photographs, video, and audio recordings that depict or record the killing of a law enforcement officer or the killing of a victim of mass violence....74
d. Death certificates....75
3. Child and vulnerable adult abuse and protection records....75
a. Department of Children and Families abuse records....75
(1) Confidentiality of abuse records....75
(2) Release of abuse records....75
b. Foster home, licensure, and quality assurance records....76
c. Guardians ad litem and court monitors....77
d. Status of abuse records held by law enforcement agencies....77
4. Direct-support organizations....77
5. Domestic violence and stalking records....78
6. Drafts and notes....79
7. Education records....81
a. Charter schools....81
b. Student records....81
c. Children in government-sponsored recreation programs....82
d. School system security....82
e. Testing materials....82
8. Election records....82
a. Ballots....82
b. Voter registration and voter records....83
9. Electronic and computer records....83
a. Electronic databases and files....83

b. Consideration of public access in design of electronic recordkeeping system....84
c. E-mail....85
d. Social media postings....85
e. Text messages....85
f. Cybersecurity....86
10. Emergency records....86
a. Emergency "911" records....86
b. Emergency evacuation plans and special needs registry....87
c. Emergency medical services records....87
d. Emergency notification....87
e. Emergency planning information furnished to Division of Emergency Management....88
f. Emergency shelter and disaster recovery assistance....88
11. Financial records....88
a. Audit reports....88
(1) Auditor General audits....88
(2) Local government audits....88
(3) State agency inspector general audits....89
b. Bids, proposals and financial statements....89
c. Budgets....90
d. Economic development records....90
(1) Business location or expansion plans....90
(2) Convention center booking business records....91
e. Ownership records for registered public obligations....91
f. Personal financial records....92
(1) Bank account, debit, and credit card numbers....92
(2) Consumer financial information....92
(3) Financial information submitted by state licensure applicants....92
(4) Temporary cash assistance program participant....92
(5) Toll payment personal identifying information....92
(6) Utility payment records....93
g. Taxpayer records....93
12. Firearms records....93
13. Hospital and medical records....94
a. Communicable or infectious disease reports....94
b. Hospital records....95
(1) Public hospitals....95
(2) Private hospitals/private organizations operating public hospitals....95
c. Patient and clinical records....95
(1) Patient and clinical records generally....95
(2) Disclosure of patient records....96
d. Emergency medical services....96
e. Hospital employees....97
f. Persons with disabillities registry....97
14. Investigative records of non-law enforcement agencies....97
a. Investigative records generally....97
b. Statutory exemptions....98
(1) Discrimination investigations....98
(2) Employee misconduct investigations....99
(3) Ethics investigations....99
(4) Local government inspector general investigations....99
(5) State inspector general investigations....99
(6) State licensing investigations....100
(7) Whistle-blower investigations....100
(a) Whistle-blower identity....100

(b) Active investigations 101
15. Law enforcement records 101
a. Arrest and crime reports and the exemption for active criminal investigative and intelligence information 101
(1) Arrest and crime reports 101
(2) Purpose and scope of exemption 102
(3) Definition of active criminal investigative or intelligence information 103
(4) Information that is *not* considered to be criminal investigative or intelligence information and must be released unless some other exemption applies 103
(5) Records released to the defendant 104
(6) Active versus inactive criminal investigation or intelligence information 106
(a) Active criminal investigative information 106
(b) Active criminal intelligence information 107
(c) Pending prosecutions or appeals 107
(7) Criminal defendant's public records request 108
(8) Disclosure of active criminal investigative information to the public 108
(9) Disclosure of active criminal investigative information to another criminal justice agency 108
(10) Records containing both active criminal investigative information and non-exempt information 110
(11) Criminal investigative or intelligence information received from other states or the federal government 110
(12) Criminal investigative or intelligence information received prior to January 25, 1979 110
b. "Baker Act" reports prepared by law enforcement officers 111
c. Body camera recordings 111
d. Confessions 111
e. Confidential informants 112
f. Conviction integrity unit reinvestigation information 113
g. Criminal history information 113
(1) Criminal history information generally 113
(2) Sealed and expunged records 114
h. Fingerprint and genetic genealogy records 114
i. Forensic behavioral health evaluations 114
j. Geolocation Information 114
k. Juvenile offender records 115
(1) Confidentiality and authorized disclosure 115
(2) Exceptions to confidentiality 116
(a) Child traffic violators 116
(b) Felony arrests and adult system transfers 116
(c) Mandatory notification to schools 116
(d) Criminal history information relating to juveniles 117
(e) Victim access 117
l. Motor vehicle records 117
(1) Automated license plate recognition system records 117
(2) Crash reports 117
(3) Traffic citations 118
(4) Department of Highway Safety and Motor Vehicles motor vehicle records 118
m. Pawnbroker records 119
n. Polygraph records 119
o. Prison and inmate records 119
p. Resource inventories and emergency response plans 120

q. Surveillance techniques, procedures, or personnel....120
r. Undercover personnel....121
s. Victim information....121
(1) Marsy's Law....121
(2) Statutory exemptions relating to victim information....121
(a) Amount of stolen property....121
(b) Commercial solicitation of victims....122
(c) Documents which are *received* by an agency regarding victims....122
(d) Home or employment address, telephone number, assets....122
(e) Information identifying or depicting victims of sex offenses and of child abuse....123
(1) Law enforcement and prosecution records....123
(2) Court records....124
(3) Department of Children and Families abuse records....125
(f) Homicide victims and witnesses....125
(1) Photographs and video or audio recordings of killing of law enforcement officer or the killing of a victim of mass violence....125
(2) Address of victim of an incident of mass violence....126
(3) Autopsy report of death of minor due to domestic violence....126
(4) Homicide witness....126
(g) Human trafficking victims....126
(h) Relocated victim or witness information....126
16. Litigation records....127
a. Attorney-client communications....127
b. Attorney work product....127
(1) Scope of exemption....128
(a) Attorney bills and payments....128
(b) Records prepared prior to litigation or for other purposes....128
(c) Settlement records....130
(2) Duration of exemption....130
c. Other statutory exemptions relating to litigation records....131
d. Attorney notes....132
17. Personal records not made or received in the course of official business....133
18. Personnel records....135
a. Annuity or custodial account activities....135
b. Applications for employment, references, and resumes....135
c. Collective bargaining....135
(1) Relationship of collective bargaining agreement to personnel records....135
(2) Collective bargaining work product exemption....136
d. Complaints against employees....136
(1) Law enforcement and correctional officers....136
(a) Scope of exemption and duration of confidentiality....136
(b) Limitations on disclosure....138
(c) Unauthorized disclosure penalties....138
(2) Public school system employees....139
(3) State university and Florida College System institution employees....139
e. Conditions for inspection of personnel records....139
(1) Privacy issues....139
(2) Sealed records....140
f. Criminal history information....140
g. Deferred compensation....141
h. Direct deposit....141
i. Drug test results....141
j. Employee assistance program....141
k. Employment search or consultant records....141

l. Evaluations of employee performance....142
(1) Hospital employees....142
(2) Public school employees....143
(3) State university and Florida College System institution employees....143
m. Examination questions and answer sheets....143
n. Home addresses, telephone numbers, and other personal information....144
(1) Listing of public officers and employees covered by exemptions....144
(a) Abuse investigators....144
(b) Child advocacy centers and child protection team....144
(c) Code enforcement officers....145
(d) County addiction treatment facility personnel....145
(e) County tax collectors....145
(f) Domestic violence advocates....145
(g) Domestic violence and specified other crime victims....146
(h) Emergency medical technicians or paramedics....146
(i) Firefighters....146
(j) Guardians ad litem....146
(k) Hospital employees....146
(l) Human resources managers (local governments)....146
(m) Impaired practitioner consultants....147
(n) Inspectors General and internal audit personnel....147
(o) Investigators and inspectors of the Department of Agriculture Consumer Services....147
(p) Investigators of the Department of Business and Professional Regulation....147
(q) Investigators of the Department of Financial Services and Office of Financial Regulation with specified duties....148
(r) Judges, magistrates, hearing officers and judicial assistants (state)....148
(s) Juvenile Justice juvenile probation and detention officers and counselors....149
(t) Law enforcement and correctional personnel....149
(u) Personnel of the Department of Health with specified duties....149
(v) Prosecutors and judges (federal)....149
(w) Prosecutors (state)....150
(x) Public defenders and other specified counsel....150
(y) Public guardians....150
(z) Revenue collection and enforcement or child support enforcement....150
(2) Authority to release protected information....151
(3) Records held by agencies that are not the employer of the designated officers or employees....152
(4) Application of exemption to....153
(a) Telephone numbers of cellular telephones issued by agencies....153
(b) List of names of designated officers and employees....153
(c) Prior home addresses....153
(d) Maps showing physical location of homes....153
(e) Home addresses of persons who are not the owner of the property....153
(f) Booking photographs....154
o. Medical information and health insurance participant information....154
(1) Medical information and medical claims records....154
(2) Health insurance participant information....154
p. Payroll deduction records....155
q. Retiree lists....155
r. Salary records....155
s. Travel records....155

t. Undercover personnel of criminal justice agencies 156
19. Security system information and blueprints....156
a. Blueprints....156
b. Security system records....156
(1) Security system (alarm) permits and applications 157
(2) Surveillance video recordings....157
c. Cybersecurity....158
d. School system security....158
20. Social security numbers....159
21. Telephone records....159
22. Trade secrets and proprietary confidential business information....160
a. Trade secrets....160
b. Proprietary confidential business information....161

D. PROVIDING PUBLIC RECORDS....162
1. Validity of agency conditions on access....162
2. Individuals authorized to inspect and receive copies of public records....163
3. Purpose of request....163
4. Role of the records custodian....164
5. Requests for copies versus requests to inspect public records....166
6. Records maintained by more than one agency....166
7. Records not in physical possession of agency....166
8. "Overbroad" public records requests....167
9. Written request or form requirements....167
10. Identification of requester....168
11. Remote access....168
12. Requests to create new records, answer questions about the records, or reformat existing records....169
13. Records available in more than one medium....170
14. Amount of time allowed for response to public records requests....170
a. Duty to acknowledge requests promptly....170
b. Automatic delay impermissible....171
c. Unjustified delay....171
d. Arbitrary time for inspection....172
e. Standing requests for production of future records....172
15. Confidentiality agreements....173
16. Redaction of confidential or exempt information....174
17. Privacy rights....176
18. Liability for disclosure....176

E. STATUTORY EXEMPTIONS....177
1. Creation of exemptions....177
2. Strict construction....178
3. Retroactive application of new exemptions....179
4. Retroactive application of statutes eliminating confidentiality....179
5. Difference between exempt and confidential records....179
a. Confidential records....179
b. Exempt records....180
6. Discovery of exempt or confidential records....181

F. FEDERAL LAW AND THE FLORIDA PUBLIC RECORDS LAW....182
1. Application of federal confidentiality requirements to Florida public records....182
2. Copyrighted records....183
a. Copyrights held by agencies....183
b. Copyrighted material obtained by agencies....183

G. FEES FOR INSPECTING AND COPYING PUBLIC RECORDS 184
1. Inspection of public records 184
2. Copies of public records 185
3. Special service charge for *extensive* use of clerical or supervisory labor or *extensive* information technology resources 185
a. Meaning of the term "extensive" 185
b. Meaning of the term "information technology resources" 186
c. Cost to review records for exempt information 186
d. Calculation of labor cost 186
e. Reasonable deposit or advance payment 187
4. Requests for information regarding costs to obtain public records 188
5. Requests for free copies of public records 188
6. Authority to charge for development, overhead, or travel costs 189
7. Fees to obtain agency records held by private companies 189
8. Sales tax 190
9. Confidential records 190
10. Requester makes his/her own copies 190
11. Fee issues relating to specific records 190
a. Clerk of court records 190
(1) County records 190
(2) Judicial records 191
b. Department of Highway Safety and Motor Vehicles crash reports 191

H. REMEDIES AND PENALTIES 191
1. Voluntary mediation program 191
2. Civil action 191
a. Remedies 191
(1) Mandamus 192
(2) Injunction 193
(3) Declaratory relief sought by agencies 193
(4) Damages 194
b. Procedural issues 194
(1) Discovery 194
(2) Hearing 194
(3) In camera inspection 195
(4) Mootness 196
(5) Stay 197
(6) Venue 197
c. Attorney's fees and costs 198
3. Criminal and noncriminal infraction penalties 201

I. MAINTENANCE, STORAGE, AND RETENTION REQUIREMENTS 201
1. Maintenance and storage of records 201
2. Delivery of records to successor 202
3. Transition records of certain officers-elect 202
4. Retention and disposal of records 202
a. Retention schedules 202
b. Disposal of records 203
c. Exempt records 203
d. Evidence obtained by law enforcement agencies 204
e. Duplicate records 204

APPENDICES

A. PUBLIC RECORDS AND MEETINGS CONSTITUTIONAL AMENDMENT.....205

B. GOVERNMENT IN THE SUNSHINE LAW AND RELATED STATUTES.....205

C. THE PUBLIC RECORDS ACT (SELECTED PORTIONS ONLY).....211

D. EXEMPT, CONFIDENTIAL, AND LIMITED ACCESS PUBLIC RECORDS AND MEETINGS - EXEMPTION SUMMARIES.....225

E. SECTION 11.0431, FLORIDA STATUTES-LEGISLATIVE RECORDS; EXEMPTIONS FROM PUBLIC DISCLOSURE 306

F. TABLE OF APPELLATE CASES.....307

INDEX TO MANUAL AND EXEMPTIONS.....328

A Public Policy of Open Government

INTRODUCTION

Our system of open government is a valued and intrinsic part of the heritage of our state. Each day, Floridians use these laws to inform themselves as citizens, to attend government meetings and to review government records. As a result of these efforts, government leaders can be held accountable for their actions.

The Founding Fathers of our country recognized this fundamental truth during our nation's infancy and it remains just as valid today. As James Madison said: "Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

Florida is nationally recognized for its strong support for government in the sunshine and this commitment is reflected in our statutes and Constitution. As Attorney General, I remain committed to the principles of transparency embodied in these laws and the benefits they secure for our state.

This year's edition of the Government in the Sunshine Manual incorporates laws, judicial decisions, and Attorney General opinions in place as of October 1, 2023. Additional information about Florida's Sunshine Laws, including answers to frequently asked questions, is available through the Office of the Attorney General's Internet homepage, which may be reached at myfloridalegal.com.

Suggestions from those who use this Manual are welcome and appreciated. Please forward comments to: Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399.

Ashley Moody
Attorney General

Legislative Highlights

The following are some of the more significant actions which occurred during the 2023 legislative session relating to the public's right of access to meetings and records.

Amusement ride investigations – Provides that all investigatory records made or received by the Department of Agriculture and Consumer Services are confidential and exempt until such time as the investigation is completed or ceases to be "active" as that term is defined in the exemption. **Chapter 23-51, Laws of Florida, amending s. 616.242(14)(b), F.S.**

Autopsy report of death of minor due to domestic violence – Provides that an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt, except as provided in the exemption. **Chapter 23-44, Laws of Florida, amending s. 406.135, F.S.**

Communications services locations, project proposals, and challenges – Establishes confidentiality for information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under cited statute or pursuant to a federal broadband access grant program implemented by the department, if such information is not otherwise publicly available and release would reveal information specified in the exemption. **Chapter 23-177, Laws of Florida, creating s. 119.071(1)(h), F.S.**

Data privacy investigative information – Information received by the Department of Legal Affairs pursuant to a notification of a violation of specified data privacy statutes or pursuant to an investigation of those provisions by the department or a law enforcement agency is confidential and exempt until such time as investigation is completed or ceases to be active, although certain information remains confidential. **Chapter 23-262, Laws of Florida, creating ss. 501.1735(6), F.S., and 501.722, F.S. This law takes effect July 1, 2024.**

Disabilities registry – All records and personal identifying information related to the enrollment of persons in a persons with disabilities registry under cited law held by a local law enforcement agency are confidential and exempt. Disclosure is authorized as provided in the exemption. **Chapter 23-313, Laws of Florida, creating s. 402.88(4), F.S.**

Elder abuse fatality review teams – Confidential or exempt information obtained by an elder abuse or vulnerable adult fatality review team retains its confidential or exempt status when held by the review team. Information contained in a record created by a review team that reveals the identity of a victim of abuse, exploitation or neglect or the identity of persons responsible for the welfare of such victim is confidential and exempt from disclosure requirements. Portions of review team meetings relating to abuse, exploitation, or neglect or abuse-related deaths of elderly persons or otherwise vulnerable adults, and the prevention of such abuse, exploitation, neglect, or deaths, during which exempt or confidential information, the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed, are exempt from open meetings requirements. **Chapter 23-261, Laws of Florida, creating s. 415.1103(10), F.S.**

Email addresses and secure login credentials – Email addresses and secure login credentials held by the Department of State pursuant to specified statutes authorizing electronic filing of records are exempt from disclosure requirements. **Chapter 23-52, Laws of Florida, amending s. 15.16, F.S.**

Genealogy investigative information – Investigative genetic genealogy information and materials as defined in the exemption are confidential and exempt from disclosure requirements. Certain disclosures are authorized. **Chapter 23-235, Laws of Florida, creating s. 119.071(2)(r), F.S.**

Health care choice discrimination investigations – A complaint alleging a business entity's, a governmental entity's or an educational institution's violation of cited statutes, and all information relating to an investigation of such complaint, held by the Department of Legal Affairs or the Department of Health is confidential and exempt from disclosure requirements until the investigation is completed or is no longer "active" as defined in the exemption, although specified information remains confidential. Certain disclosures are authorized. **Chapter 23-42, Laws of Florida, amending s. 381.00318, F.S.**

Interstate Teacher Mobility Compact – Any portion of a meeting of the Interstate Teacher Mobility Compact Commission or its executive committee in which specified information is discussed is exempt from open meetings requirements. Recordings, minutes, and records generated during any portion of any exempt meeting are exempt from disclosure requirements. Records relating to an investigation of a teacher received from another member state held by the commissioner or the Florida Department of Education pursuant to the Compact are exempt from disclosure requirements until such time as the investigation ceases to be "active" as defined in the exemption, or until such time as a preliminary investigation has been concluded with a finding that there is probable cause to proceed and a complaint is filed. **Chapter 23-166, Laws of Florida, creating s. 1012.9931, F.S.**

Inspectors and investigators for the Department of Agriculture and Consumer Services – Home addresses and other specified personal information about current or former inspectors or investigators of the Department of Agriculture and Consumer Services, and their spouses and children, are exempt from disclosure requirements. **Chapter 23-153, Laws of Florida, amending s. 119.071(4)(d), F.S.**

Judicial assistants personal information – Home addresses and other specified personal information about current judicial assistants as defined in the exemption and their spouses and children are exempt from disclosure requirements. **Chapter 23-131, Laws of Florida, amending s. 119.071(4)(d), F.S.**

Photographs and video and audio recordings of killing of minor – Photographs and video and audio recordings of the killing of a minor are confidential and exempt from disclosure requirements. Disclosure is authorized under specified circumstances. **Chapter 23-44, Laws of Florida, amending s. 119.071(2)(p), F.S.**

Psychology Interjurisdictional Compact – A psychologist's personal identifying information, other than the psychologist's name, licensure status, or licensure number, obtained from the coordinated licensure information system, and held by the Department of Health or the Board of Psychology is exempt from disclosure requirements unless disclosure is authorized by the reporting state. A meeting or portions of a meeting of the Psychology Interjurisdictional Compact Commission at which matters specifically exempted from disclosure by state or federal law are discussed is exempt from the Sunshine Law. Records generated during an exempt meeting are exempt from disclosure requirements. **Chapter 23-141, Laws of Florida, creating s. 490.0076, F.S.**

Safe-school officers – Any information that may identify whether a particular individual has been assigned as a safe-school officer at a private school and that is held by a law enforcement agency is exempt from disclosure requirements. **Chapter 23-19, Laws of Florida, amending s. 1002. 42(18), F.S**

Security or transportation services provided to the Governor – Records held by a law enforcement agency relating to security or transportation services provided to the Governor or other persons pursuant to cited law, are exempt from disclosure requirements. **Chapter 23-58, Laws of Florida, amending s. 943.68, F.S**

PART I

GOVERNMENT IN THE SUNSHINE LAW

A. SCOPE OF THE SUNSHINE LAW

Florida's Government in the Sunshine Law, s. 286.011, F.S., 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. *See Parris v. State,* 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., concurring specially), noting that "[m]eetings of two or more fellow government officials who are subject to the Sunshine Law are not allowed if any words of any type pertaining to any possible foreseeable issue will be communicated in any way unless they are open to the public to whom reasonable notice has been provided." Members-elect to such boards or commissions are also subject to the Sunshine Law, even though they have not yet taken office. 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.

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). "All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted." *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 762 (Fla. 2010). *Accord Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021).

The Sunshine Law is equally applicable to elected and appointed boards or commissions. AGO 73-223. Special district boards (AGO 74-169) and boards created by interlocal agreement (AGO 84-16) are also included. *And see* Inf. Op. to Martelli, July 20, 2009 (State Fair Authority, created by statute as a public corporation, subject to Sunshine Law). *Cf. 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).

B. WHAT ENTITIES ARE COVERED BY THE SUNSHINE LAW? APPLICATION OF THE SUNSHINE LAW TO:

1. Advisory boards

Advisory boards and committees created by public agencies may be subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them. The "dispositive question" is whether the committee has been delegated "decision-making authority," as opposed to mere "information-gathering or fact-finding authority." *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 762 (Fla. 2010). "Where the committee has been delegated decision-making authority, the committee's meetings must be open to public scrutiny, regardless of the review procedures eventually used by the traditional governmental body." *Id. Accord Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting extensively from *Sarasota Citizens for Responsible Government*, in finding that textbook evaluation committees created by the superintendent pursuant to school board policy to recommend textbooks, had been delegated decision-making authority and were therefore subject to the Sunshine Law even though the school board made the final decision to approve the textbooks. *And see* AGO 23-04, noting that "the power to make recommendations may qualify as decision-making authority even though the entity delegating that authority has the power to reject the recommendation."

For example, in *Town of Palm Beach v. Gradison,* 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the 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. *See also 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); 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). *Accord* AGOs 98-13 (citizen advisory committee appointed by city council to make recommendations to the council regarding city government and city services), and 01-84 (school advisory council created pursuant to former s. 229.58 [now s. 1001.452], F.S).

The Sunshine Law does not establish a lesser standard for members of advisory committees that are subject to the Sunshine Law. *See Monroe County v. Pigeon Key Historical Park,* Inc., 647 So. 2d 857, 869 (Fla. 3d DCA 1994) ("[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials"). Nor is there an exception from the Sunshine Law for an advisory group created by a county commissioner and composed of volunteers. *See* Inf. Op. to Wallace, January 7, 2019, emphasizing that it is the nature of the functions of an advisory group that determines the application of the Sunshine Law, not the manner of their appointment or their volunteer status.

a. Advisory boards appointed by a single public official

The Sunshine Law applies to advisory committees appointed by a single public official as well as those appointed by a collegial board. *See* Inf. Op. to Wallace, January 7, 2019 ("In the first place, advisory groups appointed by a single public official are not immunized from the public meetings requirement").

For example, in *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), the Florida Supreme Court determined that the Sunshine Law applied to an ad hoc advisory committee appointed by a university president to screen applications and make recommendations for the position of law school dean, because the committee, in deciding which applicants to reject from further consideration, performed a policy-based, decision-making function. *See also Silver Express*

Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by agency purchasing director to consider and rank various contract proposals deemed subject to Sunshine Law); *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021)(textbook committees created by the superintendent pursuant to school board policy to evaluate and rank textbooks for approval by the school board governed by s. 286.011, F.S., because they "clearly 'helped to crystalize the decision to be made' by the School Board," quoting from *Silver Express*, 691 So. 2d at 1100); and *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applies to committee formed by school board planning director to develop and recommend to the superintendent proposed new school attendance boundaries). *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); 85-76 (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation); 87-42 (ad hoc committee appointed by mayor to meet with Chamber of Commerce and draft proposal for transfer of city property). *And see* Inf. Op. to Lamar, August 2, 1993 (transition team appointed by mayor to make recommendations regarding governmental 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. "[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). *See also National Council on Compensation Insurance v. Fee,* 219 So. 3d 172 (Fla. 1st DCA 2017); and *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. Thus, if an advisory committee has a decision-making function in addition to fact-finding, the Sunshine Law is applicable. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983), recognizing that while a "search and screen" committee 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* AGO 94-21 (application of Sunshine Law to members of a negotiating team created by a city commission). *Cf. Collier County Public Schools v. Mason Classical Academy*, 342 So. 3d 753 (Fla. 2d DCA 2022), noting that discussions between two school district employees and the school district attorney conducted as part of the fact-finding process in an investigation of a charter school "clearly were not meetings pursuant to section 286.011(1) because neither employee was a school board member or part of a decision-making committee").

Accordingly, the determination as to whether an advisory committee created by a public official is subject to the Sunshine Law will necessarily depend on the duties and responsibilities performed by the committee. *See* Inf. Op. to Wallace, January 7, 2019, noting that the mere designation of a committee's function as "providing feedback" to the public official is not dispositive of the status of the committee for Sunshine Law purposes; instead, "the key determination will be the exact nature of the feedback being requested and provided." *See also* AGO 98-13 (application of the Sunshine Law to a community advisory committee appointed by a city commission).

Moreover, the "fact-finding exception" applies only to advisory committees and not to boards that have "ultimate decision-making governmental authority." *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1071-1072 (Fla. 5th DCA 2008). In *Finch*, the court held that the "fact-finding exception" did not apply to a school board as the ultimate decision-making body; thus the board could not take a fact-finding bus 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. *And see* Inf. Op. to Sugarman, August 5, 2015 (pension board not authorized to travel out of state to meet with financial consultants).

c. Staff committees

The Sunshine Law applies to meetings of elected or appointed boards; it does not ordinarily apply to staff committees or meetings. *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. The Sunshine Law does not apply "when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties." *Knox v. District School Board of Brevard*, 821 So.2d 311, 315 (Fla. 5th DCA 2002).

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 public college president to report on employee working conditions not subject to Sunshine Law). *Cf.* AGO 08-63 (although Sunshine Law does not apply to orientation sessions held by counties for special magistrates hired to hear value adjustment board petitions, "nothing would preclude a county from allowing the public to attend such orientations in order to enhance the knowledge of citizens who appear before value adjustment boards").

Accordingly, a state agency did not violate the Sunshine Law when agency employees conducted an investigation into a 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." *Baker v. Florida Department of Agriculture and Consumer Services,* 937 So. 2d 1161 (Fla. 4th DCA 2006), *review denied,* 954 So. 2d 27 (Fla. 2007). *And see Knox v. District School Board of Brevard, supra,* concluding that a team of employees appointed by an area superintendent to meet with her to interview, evaluate and recommend applicants to the superintendent served only in a "fact-finding or advisory" capacity since the superintendent received all applications for the position and he decided which applicants he would interview and nominate to the school board

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.

Accordingly, "meetings among agency staff to assess and make recommendations regarding contract management do not implicate" open meetings requirements. *Florida Environmental Regulation Specialists, Inc. v. Florida Department of Environmental Protection*, 342 So. 3d 710 (Fla. 1st DCA 2022). The court observed that "there was no delegation of policy making authority to any group of staff members at the department and the decision to terminate the contract was made by the agency official tasked with doing so." *Id. See also 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); and *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017) (Sunshine Law inapplicable to meetings "held solely for the purpose of gathering information").

However, if a staff committee has been delegated decision-making authority as opposed to mere fact-finding or information-gathering, the Sunshine Law applies to the committee. *See Wood v. Marston,* 442 So. 2d 934, 938 (Fla. 1983). It is 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. *Id. 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 that 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;" 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) (staff committee members delegated decision-making authority from public officials no longer function as staff members but "stand in the shoes of such public officials" insofar as the Sunshine Law is concerned).

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. *See also Roscow v. Abreu,* No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004), available in the Cases database at the open government site at myfloridalegal.com (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); AGO 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 AGO 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").

The *Silver Express* decision was cited in a recent case finding that textbook committees established by a school superintendent to evaluate textbooks using a "quantitative 'rubric for evaluation'" as provided in a school board policy were subject to the Sunshine Law. The court noted that even though the superintendent had the statutory duty to recommend textbooks to the school board, the school board had the authority to select the textbooks. Because the textbooks with the highest number of points were selected for recommendation to the school board, the textbook committee selections constituted rankings and "clearly 'helped to crystalize the decision to be made by'" the school board. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting *Silver Express*, 691 So. 2d at 1100.

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.

By contrast, in *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 763 (Fla. 2010), the Court found that a county administrator's discussions with staff and consultants while negotiating a memorandum of understanding with a baseball team did not violate the Sunshine Law because the administrator's "so-called negotiations team only served an informational role." According to the Court, "[t]his is not a situation where [the administrator] and the individuals he consulted made joint decisions. *Cf. Dascott v. Palm Beach County,* [supra]." *See also McDougall v. Culver,* 3 So. 3d 391 (Fla. 2d DCA 2009) and *Jordan v. Jenne,* 938 So. 2d 526 (Fla. 4th DCA 2006).

2. Candidates or members-elect

a. Candidates

The Sunshine Law does not apply to candidates for office, unless the candidate is an incumbent seeking reelection. AGO 92-05.

b. Members-elect

The requirements of the Sunshine Law apply not only to meetings of covered boards or commissions but also to "meetings with or attended by any person elected to such board or commission, but who has not yet taken office." Section 286.011(1), F.S. Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. *See also 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.). *Cf.* Inf. Op. to Lamar, August 2, 1993 (Sunshine Law applies to transition team made up of citizens appointed by the mayor to make recommendations on city government reorganization). *And see Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applied to advisory committee members "from the moment each member was selected to be on the [committee]").

A candidate who is unopposed is not considered to be a member-elect subject to the Sunshine Law until the election has been held. AGO 98-60. *Accord* Inf. Op. to Popowitz, August 12, 2016. The Popowitz opinion references a 2010 opinion from the Division of Elections (Div. of Elections Op. 10-09, July 26, 2010), finding that the date of a candidate's election to office could be deemed to be either the date specified by a court in an election case, election day itself, the date the final canvassing board certifies the election results, or some other date, depending upon the particular factual situation involved.

3. Commissions created by the Florida 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 [now known as the Florida Commission on Offender Review, *see* s. 1, Ch. 14-191, Laws of Florida] 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.

4. Ex officio board members

An ex officio board member is subject to the Sunshine Law regardless of whether he or she is serving in a voting or non-voting capacity. AGO 05-18. *Accord* Inf. Op. to Ardaman, June 24, 2021 (mayor who serves as a non-voting ex officio member of various municipal boards is subject to the Sunshine Law). *And see Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (finding that the Sunshine Law applied equally to all members of an advisory committee, including a staff member appointed as a non-voting member of the committee whose role was only to advise the voting committee members).

5. Federal entities

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. Thus, meetings of a federally-created council are not subject to s. 286.011, F.S. AGO 84-16.

However, if a board is created pursuant state law, the Sunshine Law applies even if federal officials serve on the board. *See* 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); and Inf. Op. to Green, December 11, 1998 (tri-state river commission established pursuant to *state and* federal law is subject to the Sunshine Law). *See also* 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); and *Roscow v. Abreu,* No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004), available in the Cases database at the open government site at myfloridalegal.com (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). *Cf. Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine).

6. Governor and Cabinet

Article IV, s. 4 of the Florida Constitution, establishes "a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture." The Governor and Cabinet serve as the head of certain departments within the executive branch. In addition, the Governor and Cabinet have responsibilities that arise under the Constitution. *See* Art. IV, s. 8, Fla. Const. (clemency).

The Sunshine Law does not apply to those powers of the Governor and Cabinet which derive from 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 those functions of the Governor and Cabinet which are statutory responsibilities as opposed to duties arising under the Constitution. Thus, the Governor and Cabinet are subject to the Sunshine Law 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 or the Florida Department of Law Enforcement. 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* Article 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."

7. Individual board members

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 foreseeably will 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. *See National Council of Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017); and *Mitchell v. School Board of Leon County,* 335 So. 2d 354 (Fla. 1st DCA 1976). *See also* Inf. Op. to Dillener, January 5, 1990 (Sunshine Law not normally applicable to meeting of town council member with private citizens). *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.

However, there have been circumstances where the application of the Sunshine Law to individual board members has been considered. 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). *And see* AGO 89-39 (aides to county commissioners are not 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).

a. Individual board member meeting with a member of another public board

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).

b. Mayor meeting with individual city commissioner or city council member

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. AGO 83-70. *And see* Inf. Op. to Ardaman, June 24, 2021 (Sunshine Law applies to discussions between a member of the city council and a mayor who serves as a non-voting member of the council).

On the other hand, if 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, 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). *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.).

c. Use of nonboard members or staff to act as liaisons or to conduct a de facto meeting of the board

As a general rule, individual board members "may call upon staff members for factual information and advice without being subject to the Sunshine Law's requirements." *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 764 (Fla. 2010). *And see* 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.). *Compare, State v. Dorworth,* No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), *affirmed,* No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), available in the Cases database at the open government site at myfloridalegal.com, dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney "expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens."

However, because the Sunshine Law must be construed to "frustrate all evasive devices," the law is implicated by a meeting between a board member and a nonboard member who is being used as a liaison for board members. *See Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018), citing to AGOs 96-35 (city manager may not ask each commissioner to state his or her position on a specific matter that will foreseeably be considered by the commission at a public meeting, in order to provide the information to the members of the commission) and 75-59 (city manager may meet individually with city council members "to discuss city business provided that the manager does not act as a liaison for board members by circulating information and thoughts of individual councilmembers to the rest of the board"). *See also Parris v. State,* 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., concurring specially) (warning about conducting private meetings through use of surrogates, such as aides, friends, relatives, or other government officials).

Therefore, 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* 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 when staff responses are provided to all commissioners could be considered to have participated in a de facto meeting of the commissioners by using staff as a conduit between commissioners). *Compare Sarasota Citizens for Responsible Government v. City of Sarasota, supra* at 765 (private staff meetings with individual county commissioners in preparation for a public hearing on a proposed memorandum of understanding [MOU] did not violate the Sunshine Law because the meetings were "informational briefings regarding the contents of the MOU" and "[t]here is no evidence that [county] staff communicated what any commissioner said to any other commissioner").

Additionally, 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. Thus, even though the superintendent was "adamant that he did not act as a go-between during these discussions and [denied] that he told any one board member the opinions of the others," the one-to-one meetings amounted to a de facto meeting of the school board in violation of s. 286.011, F.S. *Id.* at 580. *See also Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (4th DCA 2018) (evidence did not "conclusively refute" allegations that a series of telephone calls between the city attorney and individual city councilmembers to discuss termination of and severance pay to, the city manager constituted a Sunshine Law violation; accordingly, trial court should not have entered summary judgment in favor of the city). *Cf. State v. Foster,* 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). In *Foster*, the judge rejected the argument made by the commissioners, 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.

Similarly, 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), available in the Cases database at the open government site at myfloridalegal.com, 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. *See also Sentinel Communications Company v. School Board of Osceola County,* No. CI92-0045 (Fla. 9th Cir. Ct. April 3, 1992), available in the Cases database at the open government site at myfloridalegal.com (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"); AGO 23-04 (Sunshine Law does not permit members of a university presidential search committee to use a search firm to survey individual committee members and anonymously rank candidates to affect which candidates the committee will consider at a future meeting); and AGO 93-90 (board that

is responsible for assessing the performance of its chief executive officer [CEO] should not use a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chair for compilation and subsequent discussion with the CEO).

Not all staff decisions, however, are required 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 that board was not subject to the Sunshine Law. *And see* 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).

d. Delegation of authority to individual to act on behalf of the board

"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." *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).

In *News-Press Publishing Company v. Lee County*, 570 So. 2d 1325 (Fla. 2d DCA 1990), a newspaper challenged the trial court's decision to require the parties (two cities and a county) to participate in mediation and to each appoint a representative "with full authority to bind them." The judge then amended the order to allow the parties to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court concluded that the mediation's narrow scope did not give rise to a substantial delegation affecting the board's decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. *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 settlement agreement 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).Moreover, the Attorney General's Office has advised 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).

The Attorney General's Office has advised 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).

However, if the board member has been authorized only to gather information or function as a fact-finder, the Attorney General's Office has concluded that the Sunshine Law does not apply. *See e.g.* AGOs 95-06, 93-78, and 90-17 (if 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 of a hearing to the parties and allow them an opportunity to provide argument on the issue).

More recently, the First District Court of Appeal ruled that a statute (s. 627.091[6], F.S.), requiring a "committee" of a national insurance rating organization to comply with the Sunshine Law when meeting to discuss the need to alter Florida rates, did not apply to an actuary who performed this function instead of a committee. *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017). In *Fee*, the court noted that the term "committee" has been defined as a "subordinate group," not a single person, and that "the multi-person concept of the term 'committee' further finds support in well-established precedent construing the Sunshine Law."

Moreover, 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.). *Cf.* AGO 13-14 (where contract terms regarding the police chief's employment have been discussed and approved at a public city commission meeting, Sunshine Law does not require that the consistent written employment contract drafted by the town attorney as directed by the commission be subsequently presented to and approved at another commission meeting).

8. 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. 1976). A three-pronged test for closing 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. *And see Morris Publishing Group, LLC v. State,* 136 So. 3d 770, 779 (Fla. 1st DCA 2014); and *Miami Herald Media Company v. State*, 218 So. 3d 460 (Fla. 3d DCA 2017). The factors to be considered are whether:

1) closure 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.

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 reviewing 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 *Lake v. State,* 193 So. 3d 932, 934 (Fla. 4th DCA 2016) (trial court did not depart from essential requirements of law by refusing to close Jimmy Ryce Act civil commitment review proceeding; statutory provision requiring that certain treatment records introduced into evidence be maintained under seal unless opened by the judge "does not require that the press and public be barred from any discussion of treatment or treatment records during a review hearing").

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 statement from *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. 1950) (it is the policy of the law to shield the proceedings of grand juries from public scrutiny); and *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"). 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

(1) Court-ordered mediation

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. *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."). (e.s.) *Cf. Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that written mediation communications are confidential pursuant to ss. 44.103(3) and 44. 405(1), F.S., and must be redacted from the full transcript of a closed litigation session when it becomes public pursuant to s. 286.011(8), F.S.

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. *Cf. Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine; "[w]e cannot condone hiding behind federal mediation, whether intentionally or unintentionally, in an effort to thwart the requirements of the Sunshine Law.").

Similarly, in *O'Connell v. Board of Trustees,* 1 F.L.W. Supp. 285 (Fla. 7th Cir. Ct. Feb. 9, 1993), the court noted that 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(d), stating that "[i]f a party to mediation is a public entity required to operate in compliance with 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).

(2) Other mediation proceedings

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. Inf. Op. to McQuagge, February 13, 2002. Similarly, a 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 which is not in litigation. AGO 06-03.

h. Statutes providing for closed court proceedings

Certain court proceedings may be closed in accordance with Florida Statutes as follows:

(1) **Adoption:** 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).

(2) **Dependency:** Except as provided in s. 39.507, 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 39.507(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).

(3) **Guardian advocate appointments:** Hearings for appointment of guardian advocates are confidential. Section 39.827(4), F.S.

(4) **HIV test results:** Court proceedings in cases where a person is seeking access to human immunodeficiency virus (HIV) test results 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 proper administration of justice. Section 381.004(2)(e)9., F.S.

(5) **Pregnancy termination notice waiver:** 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(6)(f), F.S.

(6) **Termination of parental rights:** Hearings involving termination of parental rights are confidential and closed to the public. 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 "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 obtained independent of court documents even though the information may mirror the information contained in court documents").

(7) **Victim and witness testimony in certain circumstances:** Except as provided in s. 918.16(2), F.S., if any person under 16 years of age or any person with an intellectual disability is testifying in any civil or criminal trial concerning any sex offense, the judge shall clear the courtroom, except for listed individuals. Section 918.16(1), F.S. If 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 denied,* 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 Kovaleski v. State*, 854 So. 2d 282 (Fla. 4th DCA 2003), *cause dismissed*, 860 So. 2d 978 (Fla. 2003).

For a more complete listing of statutory exemptions, please see Appendix D and the Index.

9. 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. *And see* Art. III, s. 4(c), Fla. Const. (votes of members during 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).

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.

In accordance with Article III, s. 4(e), both the Senate and the House of Representatives have adopted rules implementing this section. Senate Rules may be found online at flsenate.gov. Rules of the House of Representatives may be found at myfloridahouse.gov.

10. Married couple 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.

11. Private organizations

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.

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).

Accordingly, if a private entity has been created by law or by a public agency to perform a public function, the Sunshine Law applies. *See National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017), noting the application of the Sunshine Law to

governmental bodies and to private entities created by a public entity. *Accord* AGO 00-08 ("a board or commission created by a public agency or entity is subject to section 286.011, Florida Statutes").

For example, in AGO 04-44, the Attorney General advised that a nonprofit corporation established by state law to manage corrections work programs of the Department of Corrections, was subject to the Sunshine Law. *And see* AGOs 98-42 (association legislatively designated as the governing organization of athletics in Florida public schools), 97-17 (not-for-profit corporation created by a city redevelopment agency to assist in the implementation of its redevelopment plan), and 16-01 and 98-01 (board of trustees of an insurance trust fund created pursuant to collective bargaining agreement between a city and the employee union). *Cf.* s. 20.41(6) and (8), F.S., providing that area agencies on aging, described as "nongovernmental, independent, not-for-profit corporations" are "subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings."

b. Private entities providing services to public agencies

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 see* AGOs 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). 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); and Inf. Op. to Gaetz and Coley, December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Sunshine Law).

However, although private entities are generally not subject to the Sunshine Law simply because they do business with public agencies, the Sunshine Law can apply if a public entity has delegated "the performance of its public purpose" to a private entity. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation,* 729 So. 2d 373, 382-383 (Fla. 1999). *Accord National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017); and *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021).

For example, in *Keesler v. Community Maritime Park Associates, Inc.,* 32 So. 3d 659, 660 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1289 (Fla. 2010), the court deemed it "undisputed" that a not-for-profit corporation charged by the City of Pensacola with overseeing the development of public waterfront property "is subject to the requirements of the Sunshine Law."

Similarly, 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 Families which services would normally be performed by the department, AGO 00-03; 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; and a private nonprofit corporation, if the county accepts the corporation's offer to review, recodify, and prepare draft amendments to the county zoning code, AGO 83-95. *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).

More recently, the First District determined a national insurance rating organization with statutory responsibility to file proposals for changes in Florida rates was not subject to the Sunshine Law. The court determined that the state insurance agency retained the responsibility to approve or disapprove rates and "did not delegate any authority to carry out an agency function required to be performed in the sunshine." *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017). *See also Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021) (private entity that entered into a contract with a state agency to perform certain services was not subject to the Sunshine Law because the public entity did not delegate the performance of its public purpose to the private corporation).

c. Application of the Sunshine Law to specific private entities

(1) Direct-support organizations

In AGO 05-27, after reviewing the responsibilities of a nonprofit corporation created pursuant to statute as a direct-support organization and the organization's relationship to the public agency, the Attorney General's Office concluded that the organization was subject to the Sunshine Law. *See also* Inf. Op. to Chiumento, June 27, 1990 (Sunshine Law applies to school district direct-support organizations created pursuant to statute; although the direct-support organizations "constitute private nonprofit corporations, they seek to assist the district school board in carrying out its functions of meeting the educational needs of the students in the county"). *And see* AGOs 92-53 (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 subject to Sunshine Law), and 11-01 (Sunshine Law applies to Biscayne Park Foundation, Inc., created as a nonprofit foundation to act as an instrumentality on behalf of the Village of Biscayne Park and intended to enhance the Village's opportunities to raise monies through special events, sponsorships, donations, and grants for the Village).

The Legislature has specifically exempted portions of meetings of some direct-support organizations. For example, any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committee of the board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S. Section 1004.28(5)(c), F.S. *See also* s. 292.055(9), F.S. (portions of meetings of Department of Veterans' Affairs direct-support organization during which the identity of a donor or potential donor who wishes to remain anonymous is discussed are exempt).

(2) Economic development organizations

Several Attorney General Opinions have considered whether the Sunshine Law applies to private economic development organizations. These opinions have concluded that the Sunshine Law applies when there has been a delegation of a public agency's authority to conduct public business such as carrying out the terms of the county's economic development strategic plan. AGO 10-30. *See also* AGO 10-44 (Sunshine Law applies to nonprofit corporation delegated authority to carry out the terms of the county's green economic development plan). *Compare* Inf. Op. to Gaetz and Coley, December 17, 2009 (open government laws did not apply to private economic development corporation since no delegation of a public agency's governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of the agency). *Cf. Economic Development Commission v. Ellis,* 178 So. 3d 118, 123 (Fla. 5th DCA 2015) (trial court erred by using the "delegation of function" test to conclude that a private entity under contract with a county to provide economic development services was subject to the Public Records Act because there was "not a clear, compelling, complete delegation of a governmental function" to the entity; instead, the court should have used the "totality of factors" test to make this determination). For more information on the "delegation of function" and "totality of factors" tests, please refer to the discussion on pages 62-65.

(3) 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); s. 718.112(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) Political parties

Meetings of political parties are not subject to s. 286.011, F.S. Inf. Op. to Armesto, September 18, 1979.

(5) Volunteer fire departments

In AGO 04-32, the Attorney General advised that boards of directors of volunteer fire departments that provide firefighting services to the county and use facilities and equipment acquired with county funds are subject to the Sunshine Law. *Cf.* AGO 00-08 (meetings of Lee County Fire Commissioner's Forum, a nonprofit corporation created by fire districts operating in Lee County, at which two or more members of the same district board discuss matters that may foreseeably come before the board for official action are subject to the Sunshine Law). *And see Schwartzman v. Merritt Island Volunteer Fire Department,* 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied,* 358 So. 2d 132 (Fla. 1978) (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" for purposes of the Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

12. Staff member or public official also serving as member of public board

In some cases, staff members or public officials also serve as members of public boards. If so, discussions between those board members that involve matters which foreseeably could come before the board must be held in the Sunshine. For example, a 1993 Attorney General Opinion concluded that communications between the sheriff and the state attorney, as members of the county's criminal justice commission, would be subject to the Sunshine Law when such discussions involve matters which foreseeably would come before the commission. AGO 93-41. *Cf.* AGO 11-04, noting that if the state attorney and sheriff elect to appoint individuals to serve on a county criminal justice commission in the place of each officer, as authorized by county ordinance, neither the state attorney nor the sheriff would be a member of the commission so as to make these communications subject to the Sunshine Law. *See now,* s. 286.01141, F.S. (2013), creating a Sunshine Law exemption for that portion of a meeting of a duly constituted local advisory criminal justice commission at which members of the commission discuss active criminal intelligence or investigative information that is currently being considered by or which may foreseeably come before the commission, provided that public disclosure of the discussion is made at any public meeting of the commission at which the matter is being considered.

However, the Sunshine Law is applicable only to discussions of matters which may foreseeably come before the board. 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 or her administrative functions and would not come before the council for consideration and further action).

Similarly, the Sunshine Law would not apply to a school faculty meeting 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. Inf. Op. to Hughes, February 17, 1995; and Inf. Op. to Boyd, March 14, 1994.

C. WHAT MEETINGS OF MEMBERS OF BOARDS ARE COVERED? APPLICATION OF THE SUNSHINE LAW TO:

1. Board members attending meetings or serving as members of another public board

a. Board members attending meetings of another public board

Several Attorney General Opinions have considered whether one or more members of a board may attend or participate in a meeting of another public board. For example, in AGO 99-55, the Attorney General's Office said that a school board member could attend and participate in the meeting of an advisory committee appointed by the school board without prior notice of his or her attendance. However, the opinion cautioned that "if it is known that two or more members of the school board are planning to attend and participate, it would be advisable to note their attendance in the advisory committee meeting notice."

Moreover, while recognizing that commissioners may attend meetings of a second public board and comment on agenda items that may subsequently come before the commission for final action, the Attorney General Opinions have also advised that if more than one "commissioner is in attendance at such a meeting, no discussion or debate may take place among the commissioners on those issues." AGO 00-68. *Accord* AGO 98-79 (city commissioner may attend a public 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 because "the city commission's discussions and deliberations on the proposed ordinance must occur at a duly noticed city commission meeting"). *See also* AGOs 05-59 and 77-138.

b. Board members serving as members of another public board

Board members who also serve on a second public board may participate in the public meetings of the second board held in accordance with s. 286.011, F.S., and express their opinions without violating the Sunshine Law. AGO 07-13. In other words, "when two county commissioners are presently serving on [a regional planning] council this does not turn a meeting of the planning council into a county commission meeting, and the Sunshine Law does not require any additional or different notice of planning council meetings because of the presence of these county commission members." *Id.* Similarly, AGO 98-14 concluded that membership of three city council members on the metropolitan planning organization did not turn a council meeting into a metropolitan planning organization meeting that required separate notice. Because, however, the discussion of metropolitan planning organization matters was planned for the council meeting, the city council had properly included mention of such items in its notice of the council meeting.

Additionally, in AGO 91-95, the Attorney General's Office concluded that a county commissioner may attend and participate in the discussion at a public meeting held by the governing board of a county board on which another commissioner serves. However, "in an effort to satisfy the spirit of the Sunshine Law," the opinion also recommended that the published notice

of the county board "include mention of the anticipated attendance and participation of county commission members in board proceedings." *Id.*

2. Board member meeting with 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.

3. 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* AGO 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. AGO 94-62. *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 city commissioners' argument that the Sunshine Law permitted them 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. Instead, 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.

More recently, members of a city planning and zoning commission violated the Sunshine Law when they participated in discussions at meetings of a community improvement organization which involved planning and zoning matters. *City of Bradenton Beach v. Metz,* No. 2017 CA 003581 (Fla. 12th Cir. Ct. August 9, 2019), available online in the Cases database at the open government site at myfloridalegal.com. The trial judge found that the commissioners' participation in the discussions was particularly troubling because they continued to attend, despite Sunshine Law concerns expressed by the city attorney.

4. Confidential records discussions

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), 93-41 (county criminal justice commission), and 91-88 (pension board).

For example, while s. 288.075(2), F.S., allows a private corporation to request confidentiality for certain records relating to a planned corporate relocation to 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 and Inf. Op. to Rooney, June 8, 2011.

In AGO 05-03, the Attorney General advised that a federal law prohibiting disclosure of certain identifying information did not authorize a state committee to close its meetings, although the committee should take steps to ensure that identifying information is not disclosed at such meetings. *And see* AGO 12-20 (county transportation board designated as "appropriate local official" authorized by statute to receive and investigate whistle-blower complaints must comply with the open meetings requirements in the Sunshine Law; however, the board must also "protect the confidential information it is considering at a meeting and must not disclose the name of the whistle-blower unless one of the specific circumstances listed in the statute is present). *Cf.* AGO 96-40 (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).

Similarly, in AGO 96-75, the Attorney General's Office advised that since under s. 286.011(8), F.S., the transcript of a closed attorney-client session is open to public inspection once the litigation is concluded, the city and its attorney 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. *Compare Everglades Law Center, Inc. v. South Florida Water Management District,* 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the statements made in AGO 96-75, regarding taking steps to protect confidentiality and privacy applied to "an *individual's* medical record in the context of a workers' compensation claim," and did not address "the confidentiality of mediation communications involving information regarding *multiple* persons," these mediation communications are confidential pursuant to ss. 44.102(3) and 44.405(3), F.S., and should be redacted from the full public transcript. [Emphasis supplied by the court].

5. E-mail, text messages, and other written communications between board members

The Sunshine Law requires boards to meet in public; boards may not take action on or engage in private discussions of board business via written correspondence, e-mails, text messages, or other electronic communications. Thus, members of an advisory committee created to make recommendations to the superintendent on school attendance boundaries violated the Sunshine Law when they exchanged private electronic communications (emails and Facebook messages) relating to committee business. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com. *See also* AGO 89-39 (members of a public board may not use computers to conduct private discussions among themselves about board business).

Similarly, city commissioners may not use an electronic newsletter to communicate among themselves on issues that foreseeably may come before the commission. Inf. Op. to Syrkus, October 31, 2000. *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); and Inf. Op. to Martelli, July 20, 2009 (authority should discuss business at publicly noticed meetings "rather than in a series of letters between authority members"). *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).

Thus, a procedure whereby a board takes official action by circulating a memorandum for each board member to sign whether the board member approves or disapproves of a particular issue, violates the Sunshine Law. Inf. Op. to Blair, May 29, 1973. *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"); *Schweickert v. Citrus County Port Authority,* No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), available online in the Cases database at the open government site at myfloridalegal.com (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting); and AGO 93-90 (board not authorized to use employee evaluation procedure whereby individual board members send their individual written comments to the board chair for compilation and subsequent private discussion with the employee). *Compare Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "evaluation team" members who individually evaluated competing proposals, individually assigned scores, and individually submitted their scores for consideration by others, did not take "formal action" and thus were not obligated to conduct a meeting subject to the Sunshine Law).

However, 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 must be maintained as a public record, 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 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 involving foreseeable action by the council). *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, on the other hand, 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. Similarly, in AGO 96-35, the Attorney General's Office concluded that while a school board member may prepare and circulate an informational memorandum or position paper to other board members, the 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. "Such action would be equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input." *Id.*

In addition, the Attorney General's Office stated that while it is not a "direct violation" of the Sunshine Law for members to circulate their own written position papers on the same subject as long as the board members avoid any discussion or debate among themselves except at an open public meeting, this practice is "strongly discourage[d]." AGO 07-35. *See also* 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); 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); and Inf. Op. to Jove, January 22, 2009 (posting of anticipated vote on blog).

6. Fact-finding or 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 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).

The "fact-finding 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. *See also Citizens for Sunshine, Inc. v. School Board of Martin County,* 125 So. 3d 184 (Fla. 4th DCA 2013) (three school board members violated the Sunshine Law when they visited an adult education school and talked with a school administrator, teachers, and students, because the "undisputed evidence showed that the defendant board members, without providing notice, conducted a meeting at the adult education school relating to matters on which foreseeable action would have been taken."). *Cf. Citizens for Sunshine v. City of Sarasota*, No. 2013 CA 007532 (Fla. 12th Cir. Ct. July 8, 2016), *aff'd sub nom. Citizens for Sunshine, Inc. v. Chapman,* 225 So. 3d 810 (Fla. 2d DCA 2017), available online in the Cases database at the open government site at myfloridalegal.com, in which the trial judge held that a city commissioner did not violate the Sunshine Law when she spoke about city commission issues at a private event organized by local merchants even though another commissioner was in the audience.

7. Informal discussions, workshops, organizational sessions, election of officers

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 or that an item be listed on a board agenda in order for a meeting of members of a public board or commission to be subject to s. 286.011, F.S. 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).

Accordingly, 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. *Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755, 764 (Fla. 2010). *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). "Under Florida law, there is no such thing as an 'informal' conference or 'unofficial' caucus or pass-you-in-the hallway information gathering (or sharing) by two or more government officials subject to the Sunshine Law which would thereby remove such communication from the Sunshine Law's ambit. Indeed, such 'innocuous' meetings have been held to be illegal and nothing short of the unlawful crystallization of secret decisions to a point just short of public discussion and ceremonial acceptance." *Parris v. State,* 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., concurring specially).

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.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. Similarly, the Attorney General's Office advised that the following gatherings are subject to the Sunshine Law: a public forum hosted by a city council member with city council members invited to attend and participate in the discussion, Inf. to Jove, January 12, 2009; "executive work sessions" held by a board of commissioners of a housing authority to discuss policy matters, AGO 76-102; "workshop meetings" of a planning and zoning commission, AGO 74-94; and "conference sessions" held by a town council before its regular meetings, AGO 74-62. *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).

The Sunshine Law applies to an organizational session of a board. *Ruff v. School Board of Collier County,* 426 So. 2d 1015 (Fla. 2d DCA 1983). Discussions between two members of a three-member complaint review board regarding their selection of a third member are subject to s. 286.011, F.S. AGO 93-79. Additionally, the Sunshine Law is applicable to meetings held to elect officers of the board. AGOs 72-326 and 71-32 (boards may not use secret ballots to elect officers).

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). *See, e.g.,* 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").

8. 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)(c)(d) and (e), F.S., provides that any proceeding related to a complaint, referral, or preliminary investigation conducted by the Commission on Ethics or other specified entities is exempt from open meetings requirements until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the proceedings be made public, the Commission on Ethics determines that it will not investigate a referral, or until the Commission or other specified entity determines whether probable cause exists to believe that a violation has occurred. *Compare* ss. 455.225(4) and 456.073(4), F.S. (meetings of probable cause panels of the Department of Business and Professional Regulation and Department of Health exempt from Sunshine Law until 10 days after probable cause is found to exist or until confidentiality is waived by subject of investigation).

9. Litigation meetings

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).

However, a discussion or activity that is not a meeting for purposes of the Sunshine Law shall not be construed to waive the attorney-client privilege established in s. 90.502, F.S. Section 90.502(6), F.S. *See Collier County Public Schools v. Mason Classical Academy, Inc.*, 342 So. 3d 753 (Fla. 2d DCA 2022), in which the court observed that s. 90.502(6), F.S., permits school district employees to claim the attorney-client privilege if they can establish that their conversations with counsel were protected by the privilege.

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 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. (e.s.)

(1) Strict compliance with statutory conditions

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 onerous 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).

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.

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."

(2) Permitted discussions during closed 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).

Accordingly, a court found that a city did not comply with s. 286.011(8), F.S., when it held closed meetings that "covered a wide range of political and policy issues not connected

to" settlement of pending litigation regarding a comprehensive plan amendment or litigation expenses relating to the pending cases which at that point were on appeal. "While some of the discussion at these meetings did in fact involve the costs associated with the pending litigation, by and large the meetings pertained to finding a way to readopt the comprehensive plan amendment that had been invalidated by the court and to avoid future litigation regarding the readopted amendment." *Anderson v. City of St. Pete Beach,* 161 So. 3d 548, 553 (Fla. 2d DCA 2014).

Similarly, a city council violated the Sunshine Law where the "great majority" of the discussion at an attorney-client session concerned the specifics of a proposed amendment to the city's trespass ordinance which was designed to address concerns expressed in a federal court decision finding the ordinance to be unconstitutional. *City of St. Petersburg v. Wright*, 241 So. 3d 903 (Fla. 2d DCA 2018). The participants at the closed meeting "did not limit themselves to discussing settlement or litigation expenditures" in the federal litigation. *Id. 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").

(3) Entity involved in *pending* litigation

Section 286.011(8) permits an entity to use the exemption if the entity "is presently a party before a court or administrative agency . . . ." For example, a city council and its attorney may 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 suit against the city because the system prescribed in ch. 440, F.S., "operates as a means of adjudicating workers' compensation claims and would be considered litigation before an administrative agency." 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").

Similarly, s. 286.011(8), F.S. "may not be used to conduct a closed meeting during a mandatory arbitration proceeding, when there is no pending legal proceeding in a court or before an administrative agency." AGO 13-17. *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," ss. 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).; and Inf. Op. to Barrett, February 17, 2016 (board not

authorized to use exemption to discuss pending investigation and subpoena where there is no ongoing judicial or administrative proceeding).

(4) Persons authorized to attend closed session

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. Thus, other staff members, consultants, or officials 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); AGO 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). *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).

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). *And see* 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). *Cf.* AGO 15-13 (mayor who is a voting member of the city council is not precluded from attending closed session relating to pending litigation in which city council is a party, even though plaintiffs have also sued the mayor in his individual capacity).

(5) Determination of "conclusion" of the litigation

Section 286.011(8)(e), F.S., provides that transcripts of closed meetings "shall be made part of the public record upon conclusion of the litigation." *See* AGO 15-03 (transcript of a litigation strategy session which was closed to the public while the litigation was ongoing became a public record once the litigation was concluded). *Cf. Everglades Law Center, Inc. v. South Florida Water Management District,* 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the mediation communications disclosed by a governmental agency during a closed session must be redacted from the transcript of the meeting when it becomes public record; the exemptions from disclosure for mediation communications in ss. 44.102(1) and 44.405(1), F.S., are not inconsistent with the requirements of s. 286.011(8)(e), F.S.

The statute does not recognize a continuation of the exemption for "derivative claims" made in separate, subsequent litigation. AGO 13-13. For example, a transcript of a closed meeting to discuss settlement of a quiet title lawsuit became a public record upon the entry of a final judgment in that case, even though the same parties were now embroiled in an inverse condemnation lawsuit. *Chmielewski v. City of St. Pete Beach,* 161 So. 3d 521 (Fla. 2d DCA 2014). Similarly, a claim for payment of attorney's fees does not extend the application of the exemption after a final judgment has been entered and a mandate issued. Inf. Op. to Boutsis, December 13, 2012.

Accordingly, a dismissal with prejudice pursuant to a settlement agreement that confers continuing jurisdiction on the court to enforce the terms of the settlement agreement operates as a conclusion of the litigation. AGO 15-03. By contrast, 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 (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); and Inf. Op. to Boutsis, *supra* (legislative history of s. 286.011[8], F.S., indicates "that the Legislature intended the exemption to continue through the appeals segment of the litigation"). *Cf. Wagner v. Orange County,* 960 So. 2d 785 (Fla. 5th DCA 2007), concluding that the phrase "conclusion of the litigation or adversarial administrative proceedings" for purposes of the attorney work product exemption from the public records law found in s. 119.071(1)(d), F.S., encompasses postjudgment collection efforts such as a legislative claims bill.

In AGO 13-21, the Attorney General's Office observed that s. 286.011(8)(e), F.S., "should be seen as a tool which governmental boards or commissions may employ in their discretion but the statute should not be read as a prohibition against the release of such records prior to the conclusion of . . . litigation." Therefore, a city council, as the collegial body to which the exemption applies, may waive the exemption and release transcripts of meetings held pursuant to s. 286.011(8), F.S., prior to the conclusion of litigation. *Id.*

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* AG0 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.

10. Personnel matters

In the absence of a specific statutory exemption, meetings of a public board or commission to discuss personnel matters are subject to the Sunshine Law. *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).

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 85-99. *And see* AGO 99-27, 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 negotiation 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 Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014), *review denied,* No. SC 16-2490 (Fla. February 24, 2016). *See also* 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 see Brown v. Denton,* 152 So. 3d at 12 (By holding closed-door negotiations that resulted in changes to public employee pension benefits, "the [city and pension board] ignored an important party who also had the right to be in the room -- the public."). *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. Disciplinary, grievance, and complaint review proceedings

Meetings of a board or commission to conduct disciplinary proceedings are subject to the Sunshine Law. *See, e.g.,* AGO 92-65 (employee termination hearing conducted by housing authority commission). *And see News-Press Publishing Company v. Wisher,* 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 county commission meeting held to reprimand an unnamed department head.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. *And see Barfield v. City of West Palm Beach,* No. CL94-2141-AC (Fla. 15th Cir. Ct. May 6, 1994) , available online in the Cases database at the open government site at myfloridalegal.com. (complaint review board of a city police department is subject to the Sunshine Law); AGO 80-27 (sheriff civil service board created by special act is subject to the Sunshine Law). *Cf.* 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.).

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 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. *See also* AGO 10-14 (team created by charter school board of directors to review employment decisions is subject to the Sunshine Law). *Cf.* 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).

A grievance committee established as "the final hearing body for all matters determined to be grievances and [authorized] to uphold, modify, or deny any grievance" is subject to the Sunshine Law "because the [committee] clearly exercises decision-making authority." *Dascott v. Palm Beach County, supra* at 13. *And see* AGO 84-70 (Sunshine Law applies to staff grievance committee created to make a determination of "all facts and circumstances" and nonbinding recommendations to a county administrator regarding disposition of employee grievances). *Cf. 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.

By contrast, in *Jordan v. Jenne,* 938 So. 2d 526, 530 (Fla. 4th DCA 2006), the court determined that the Sunshine Law did not apply to a professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general, because the inspector general made the "ultimate decision" on discipline and did not deliberate with the committee. *See also 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).

Similarly, if the 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). *And see* AGO 07-54 (while post-termination hearings before city manager are not subject to the

Sunshine Law, hearings before a three-member panel appointed by the city manager should be open).

c. Evaluations

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.

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 chair 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. 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. *See also 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), and AGO 77-43 (Sunshine Law applies to 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).

Accordingly, the Sunshine Law applies to a state university presidential search and selection committee. AGO 23-04. Moreover, the Sunshine Law does not permit committee members to use a search firm to survey individual committee members and anonymously rank candidates to affect which candidates the committee will consider at a future meeting. *Id.* While s. 1004.098(2)(a), F.S., provides an exemption for portions of certain meetings of the search committee, this exemption applies only when the committee complies with the criteria of the exemption, such as recording the entire portion of the exempt meeting. *Id.*

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."

11. Purchasing meetings

a. Application of Sunshine Law

A committee appointed by a public 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 AGO 80-51 (Sunshine Law applicable to city selection committee screening proposals from consultants and audit firms). *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"); and *Schweickert v. Citrus County Port Authority,* No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), , available online in the Cases database at the open government site at myfloridalegal.com (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting). *Compare Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "Evaluation Team" members who individually evaluated the competitors' proposals, individually assigned scores, and individually submitted their scores for consideration by the "Negotiation Team" were not required to conduct a public meeting to perform these functions because "the Evaluation Team [or more accurately, its individual members] neither ranked the competitors nor excluded any from consideration of the ultimate decider, the Negotiation Team").

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 public committee meeting during presentations by competitors. *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). *See now* s. 286.0113(2)(b), F.S., discussed below, providing an exemption from the Sunshine Law for protions of certain competitive solicitation meetings and requiring a complete recording of the exempt portions.

b. Recording requirement for exempt meetings

Section 286.0113(2)(b)1. and 2., F.S., provide that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, is exempt from the Sunshine Law. In addition, any portion of a team meeting at which negotiation strategies are discussed is also exempt. *See Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), in which the court rejected the agency's argument that the exemption applies to the *entirety* of any meeting at which negotiation strategies are discussed, even those portions that have nothing to do with procurement. However, the court also said that "the exempted 'portion' includes not only the negotiation-strategies discussions themselves, but also meeting activities inextricably intertwined with those discussions." *Id.* at 1269. *Cf.* s. 255.0518, F.S. (sealed bids received pursuant to a competitive solicitation for construction or repairs of a public building or public work must be opened at a public meeting conducted in compliance with the Sunshine Law).

The term "[c]ompetitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 286.0113(2)(a)1., F.S.

The term "team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation. Section 286.0113(2)(a)2., F.S.

A complete recording must be made of the exempt meeting; no portion of the exempt meeting may be held off the record. Section 286.0113(2)(c), F.S. *Cf.* AGO 10-42 (where statute required that closed proceedings of state committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded").

The recording and any records presented at the exempt meeting are exempt from public disclosure until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier. Section 286.0113(2)(c)1. and 2., F.S. *And see* s. 286.0113(2)(c)3., F.S. (exempt status of recording if the agency rejects all bids, proposals, or replies, and concurrently provides notice of its intent to reissue a competitive solicitation).

12. Quasi-judicial matters, proceedings or hearings

The Sunshine Law does not authorize boards to conduct closed-door hearings or deliberations simply because the board is acting in a "quasi-judicial" capacity. *Canney v. Board of Public Instruction of Alachua County,* 278 So. 2d 260 (Fla. 1973). *And see Occidental Chemical Company v. Mayo,* 351 So. 2d 336, 340n.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.

Thus, in the absence of statutory exemption, "[t]he fact that a board or commission is acting in a quasi-judicial capacity does not remove it from the reach of section 286.011, Florida Statutes." AGO 10-04. *And see* AGOs 92-65, 83-43 and 77-132. *Cf.* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

13. 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. AGO 74-294. *Cf.* AGO 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). *Cf. Monroe County v. Pigeon Key Historical Park, Inc.,* 647 So. 2d 857 (Fla. 3d DCA 1994) (committee established by county commission to negotiate lease agreement subject to s. 286.011).

14. Security meetings

While there is no general exemption from open meetings requirements that applies to all discussions relating to "security," s. 286.0113(1), F.S., states that the portion of a meeting

that would reveal a security or firesafety 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 or firesafety system plan") is exempt from open meetings requirements. *See* Inf. Op. to Sherman, July 2, 2018, noting that the phrasing of s. 286.0113(1), F.S., and the statement of legislative intent included in the session law show that the exemption applies to any portion of a meeting in which a record as defined in s. 119.071(3)(a) would be revealed.

Section 119.0725(2), F.S., discussed more fully on page 158 provides confidentiality for specified cybersecurity information held by an agency. Any portion of a meeting that would reveal cybersecurity information made confidential in s. 119.0725(2), F.S., is exempt from open meetings requirements. Section 119.0725(3), F.S. An exempt portion may not be off the record and must be recorded and transcribed; the recording and transcript are confidential. *Id. See also* s. 282.318(6) (portions of meetings held to discuss specified cybersecurity records held by state agencies are exempt); s. 286.0113(3)(a), F.S. (exemption for portions of meetings held by local government owned utilities that would reveal information technology security records made exempt under s. 119.0713(5), F.S.); s. 1004.0962(5), F.S. (exemption for portions of meetings held to discuss a postsecondary educational institution's "campus emergency response"); and s. 1004.055(2), F.S. (exemption for portions of meetings held to discuss specified information technology security records maintained by postsecondary educational institutions). *Cf.* s. 286.0113(4)(b), F.S. (exemption for portions of meetings that would reveal building plans or geographical maps indicating the actual or proposed location of 911, E911, or public safety radio communication system infrastructure).

15. 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. *Accord* Inf. Op. to Batchelor, May 27, 1982.

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. *Cf.* AGO 71-295, cautioning that "[p]ublic bodies should avoid secret meetings, from which the public and the press are effectively excluded, preceding official meetings, even though such secret meetings are held ostensibly for purely social purposes only and with the understanding that the members of the public body will, in good faith, attempt to avoid any discussion of official business."

16. Telephone conversations and virtual meetings

a. Private phone conversations

Private phone conversations between board members to discuss matters which foreseeably will come before that board for action violate the Sunshine Law. "To interpret the statute as applying only to in-person meetings would render an absurd result." *Gilliams v. State,* 359 So. 3d 784 (Fla. 4th DCA 2023). *See also Transparency for Florida , Inc.. v. City of Port St. Lucie,* 240 So. 3d 780, 785 (Fla. 4th DCA 2018), recognizing that a series of phone conversations between councilmembers and the city attorney implicated the Sunshine Law. *And see* the discussion on pages 23-24 regarding the application of the Sunshine Law to emails, text messages, and other written communications between board members.

b. Authorization to conduct and participate in public meetings via teleconferencing, video conferencing, or other electronic media

(1) Sunshine Law

Although both the Florida Constitution and the Sunshine Law require that, unless exempt by law, meetings of a government board must be "public meetings" that are "open to the public,"

neither provision requires that members of the public board be physically present during the meeting. *See Burton v. Oates,* 362 So. 3d 311 (Fla. 5th DCA 2023) (city commissioner did not violate the Sunshine Law when she attended a public virtual commission meeting where specific procedures were available for the public to attend through a virtual platform). *Accord* AGO 20-03. *And see* Inf. Op. to Stebbins, December 1, 2015 (board's use of electronic media technology to increase public participation in meetings and the use of such media to allow members of a board or commission to participate in a duly noticed public meeting does not necessarily raise Sunshine Law issues, "but rather implicates the ability of a board or commission to conduct public business with a quorum.").

(2) In person quorum requirements

The Attorney General's Office has advised that if a quorum is required to conduct official business, boards may only conduct meetings by teleconferencing or other technological means if they are authorized to do so by law or the in person requirement for constituting a quorum is lawfully suspended during a state of emergency. AGO 20-03. Attorney General Opinion 20-03 emphasized, however, that "if meetings are conducted by teleconferencing or other technological means, public access must still be afforded which permits the public to attend the meeting. That public access may be provided by teleconferencing or technological means." *Cf. Jackson v. City of South Bay,* 358 So. 3d 18 (Fla. 4th DCA 2023), noting that a 2020 Executive Order which temporarily allowed certain virtual meetings in response to a declared state of emergency expressly recognized that the Sunshine Law remained in effect.

Similarly, "[a]s an administrative arm of the city's governing body . . . it would appear that the same legislative requirement for the physical presence of a quorum in order to conduct municipal business would apply when the retirement board is carrying out its delegated duties." AGO 10-34. Thus, in January 2021, the Attorney General's Office concluded that in the absence of legislation providing otherwise, the same physical presence quorum requirement that governs school board meetings would apply to meetings of school board advisory committees. Inf. Op. to Myrick, January 28, 2021. *See now* s. 1001.43(10), F.S., effective July 1, 2021, providing that members of school district "special committees and advisory committees may attend meetings in person or through the use of telecommunications networks such as telephonic and 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* boards to conduct public meetings via entirely electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. *See* Rule 28-109, F.A.C. *And see* AGO 20-03, noting that state boards have been conducting meetings using "communications media technology" since 1997.

(b) Local boards

(1) Meetings

As to *local* boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct meetings entirely through the use of electronic media technology applies only to *state* agencies. AGOs 20-03 and 98-28. Thus, unless the in-person requirement to constitute a quorum has been waived by law or lawfully suspended during a state of emergency, a quorum of the board must be physically present. AGO 20-03.

For example, 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* AGOs 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). and 10-34 (city may not adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum). *Cf.* s. 120.525(4),

F.S., allowing a voting member of a regional planning council that covers three or more counties who participates via telephone or videoconferencing to be counted towards a quorum, provided that at least one third of the voting members are present at the meeting location and that notice of intent to participate remotely is given at least 24 hours prior to the meeting; and s. 163.01(18), F.S., authorizing certain entities created by interlocal agreement to conduct public meetings and workshops by means of communications media technology.

However, 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.

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a 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. AGO 94-55. *And see* AGOs 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).

(2) Workshops

The physical presence of a quorum has not been required 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. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. *See* Inf. Op. to Stebbins, December 1, 2015 (approval of board meeting minutes constitutes official action; vote to approve minutes not exempted from quorum requirements). Moreover, as discussed above, boards conducting workshop meetings electronically must still comply with the Sunshine Law.

For example, the Attorney General's Office advised that 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, the 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 foreseeably may 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).

Moreover, there is no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting. Inf. Op. to Sugarman, August 5, 2015.

D. NOTICE AND PROCEDURES

1. 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), *review denied,* 47 So. 3d 1288 (Fla. 2010) (Sunshine Law does not prohibit use of consent agenda procedure).

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 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form excluding confidential and exempt information, shall be published on the agency's website. *Id.* After the agenda has been made available, changes may be made only for good cause. *Id.*

Similarly, special districts are required to post certain information on the district's official website, including: "[a]t least 7 days before each meeting or workshop, the agenda of the event." Section 189.069(2)(a)15., F.S. The information must remain on the website for at least 1 year after the event. *Id.*

2. Location of meetings

a. Facilities that discriminate or unreasonably restrict access to the facility

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.

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. *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." *See also* the discussion on page 49 relating to inaudible discussions.

c. 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). *See also* the discussion on page 25 relating to inspection and fact-finding trips.

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. *And see* Inf. Op. to Sugarman, August 5, 2015 (no apparent authority for use of electronic media technology to allow city pension board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public with electronic access to the remote meeting).

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 and 03-03 (municipality may not hold commission meetings at facilities outside its boundaries). *See now* ss. 166.0213(1), F.S. (governing body of municipality with 500 or fewer residents may hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality at such time and place as may be prescribed by ordinance or resolution); 166.0213(2), F.S. (governing body of a municipality may hold joint meetings to receive, discuss, and act upon matters of mutual interest with the governing body of the county within which the municipality is located or the governing body of another municipality at such time and place as shall be prescribed by ordinance or resolution); and 125.001(2), F.S. (authorizing boards of county commissioners to hold joint public meetings with governing boards of adjacent counties or municipalities upon due public notice within the jurisdiction of all participating counties and municipalities; provided that an authorizing resolution is adopted, no official vote is taken at the joint meeting, and the joint meeting may not take the place of a public hearing required by law). *Cf.* AGO 20-03, noting that a quorum of the board must be physically present at the meeting of a board which is required to be held at a place within the body's jurisdiction. For more information on this issue, please see the discussion on pages 37-38.

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.

d. Size of meeting facilities

The Sunshine Law requires that meetings of a public board or commission be "open to the public." If a large turnout is expected for a particular meeting, the Attorney General's Office has recommended that public boards and commissions take reasonable steps (such as moving the meeting to a larger room) to accommodate those who wish to attend. Inf. Op. to Galloway, August 21, 2008. If 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. *See Kennedy v. St. Johns River Water Management District,* No. 2009-0441-CA (Fla. 7th Cir. Ct. September 27, 2010), *per curiam affirmed,* 84 So. 3d 331 (Fla. 5th DCA 2011), available online in the Cases database at the open government site at myfloridalegal.com (even though not all members of the public were able to enter the meeting room, board did not violate the Sunshine Law when it held a meeting at the board's usual meeting place and in the largest available room; the court noted, however, that the board set up a computer with external speakers so that those who were not able to enter the meeting room could view and hear the proceedings).

3. Minutes

a. Scope of minutes requirement

Section 286.011(2), F.S., requires that minutes of a meeting of a public board or commission shall be promptly recorded and open to public inspection. Workshop meetings are not exempted from this requirement. AGOs 08-65 and 74-62. *And see Lozman v. City of Riviera Beach,* No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed,* 46 So. 3d 573 (Fla. 4th DCA 2010), available online in the Cases database at the open government site at myfloridalegal.com (minutes required for city council's agenda review meetings).

Because the term "promptly" is not defined in the statute, it "should be construed in its plain and ordinary sense." Inf. Op. to Board of Trustees, January 27, 2009. The informal advisory opinion notes that Webster's New Universal Unabridged Dictionary (2003) defines "prompt" as done, performed, delivered, etc., at once or without delay.

The use of the term "shall" in s. 286.011(2) "requires mandatory compliance." *Jackson v. City of South Bay,* 358 So. 3d 18 (Fla. 4th DCA 2023). In *Jackson*, the district court reversed the trial judge's conclusion that a canvassing board's delay in producing minutes until several months after an agreed upon deadline did not violate the Sunshine Law. The trial judge had cited the "busy election," the COVID pandemic, and the board's good faith conduct as justification for the delay in producing the meeting minutes. However, the appellate court said that unlike the Public Records Act, the Sunshine Law does not contain a good faith exception.

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. *Cf.* Inf. Op. to Stebbins, December 1, 2015 (vote to approve minutes constitutes official action of a board; no authority to exempt a vote to approve minutes from quorum requirements).

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), *review denied,* 47 So. 3d 1288 (Fla. 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.

b. Content of minutes

The term "minutes" as used in s. 286.011, F.S., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting; accordingly a verbatim transcript is not required. AGO 82-47. *And see State v. Adams,* No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992), available online in the Cases database at the open government site at myfloridalegal.com (no violation of Sunshine Law where minutes failed to reflect brief discussion concerning a proposed inspection trip). *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.

c. Tape recording or Internet archive as minutes

The Sunshine Law does not require that public boards and commissions tape record their meetings. *See* AGO 86-21. However, other statutes may require that certain proceedings be recorded. *See Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla.1st DCA 2017) (statute mandating that a "complete recording" be made of portions of a closed negotiation team meeting requires more than an agenda and meeting notes). *Cf.* AGO 10-42 (where statute requires that all closed proceedings of child abuse death review committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded").

However, while a board is authorized to tape record the proceedings if it chooses to do so, the Sunshine Law also requires written minutes. AGO 75-45. Similarly, while a 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. AGO 08-65.

Moreover, the tape 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. AGO 86-21. *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).

d. Use of transcript as minutes

Although a written transcript is not required, a board may use a written transcript of the meeting as the minutes, if it chooses to do so. Inf. Op. to Fulwider, June 14, 1993.

4. Notice requirements

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. AGO 90-56. *And see Baynard v. City of Chiefland, Florida*, No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003) available online in the Cases database at the open government site at myfloridalegal.com (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 Sunshine Law does not define the term "reasonable notice." However, in *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018), the court referenced AGO 73-170, which concluded that the type of notice given depends on the purpose for the notice, the character of the event about which the notice is given, and the nature of the rights to be affected. "Where there is no specific legislative directive as to what constitutes reasonable notice as a matter of law, we agree with the Attorney General that it is a fact specific inquiry." *Transparency*, at 787. *And see Parris v. State,* 359 So. 3d 1178 (Fla. 4th DCA 2023), upholding a city councilmember's conviction for violating the Sunshine Law, and rejecting as "meritless" her argument that the lack of definitions for the terms "reasonable notice" and "open to the public" in the statute render it unconstitutionally vague. To the extent that interpretation is required, "the well-established case law and the plain and ordinary meaning of the terms provide ample guidance." *Parris v. State, supra.*

Therefore, the type of notice is variable and depends upon the facts of the situation and the board involved. In each case, an agency must give notice at such time and in such a manner as to enable the media and the general public to attend the meeting. AGOs 00-08, 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. CI97-3385 (Fla. 9th Cir. Ct. May 9, 1997), available online in the Cases database at the open government site at myfloridalegal.com (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).

For example, "burying a notice inside a committee application and calendar on the instructional materials page of the [school district's] website is an unreasonable way to give public

notice of a meeting" of a school board textbook committee that is subject to the Sunshine Law. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021). Additionally, the notices did not mention that the meetings were open to the public. By contrast, the school board posted notices of regular school board meetings on the public notice page of the district website and in an electronic newsletter.

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

1. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
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, and on the agency's website, if there is one.
3. Except in the case of emergency or special meetings, notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. *See Yarbrough v. Young,* 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate).
5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly effective in providing notice of upcoming meetings.

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"). *See also* AGOs 00-08, 94-62 and 90-56. An individual challenging the adequacy of a meeting notice is not required "to allege and prove that some member of the public was not afforded an opportunity to attend the meeting because notice was not adequate," because this "is not an element of a cause of action for a Sunshine Law violation." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 787 (Fla. 4th DCA 2018).

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 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 *Lozman v. City of Riviera Beach*, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), *per curiam affirmed*, 79 So. 3d 36 (Fla. 4th DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (no violation of Sunshine Law where notice of special meeting held on Monday, September 15 was posted at city hall and faxed to the media on Friday, September 12 and members of the public [including the media] attended the meeting).

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.

c. Notice relating to record needed for appellate review

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.

This statute applies to every "board, commission, or agency of this state." *See* AGO 19-14 (Education Practices Commission, established in s. 1012.79, F.S., is a "commission" for purposes of s. 286.0105, F.S.)

The notice requirement in s. 286.0105, F.S., "is imposed at each occasion where notice of a meeting or hearing is required and is to be included in the notice to be given to the public of such meeting." *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com, quoting from AGO 89-82. *See also Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that with the adoption of s. 286.0105, F.S., "the legislature understood the importance of a verbatim record for appellate review of government board decisions ."

d. Paid advertising requirements and additional notice provisions 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. In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Mattimore, February 6, 1996.

For example, while the Sunshine Law does not mandate that an agency use a paid advertisement to provide public notice of a meeting, other statutes may specify publication requirements for certain actions. *See Yarbrough v. Young,* 462 So. 2d 515, 517n.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.). *See also* s. 189.015(1), F.S. (notice requirements for meetings of the governing bodies of special districts); and s. 1001.372(2)(c), F.S. (school board meetings). *Cf.* s. 50.0311, F.S. (Internet website publication of governmental agency notices).

Similarly, a board or commission subject to Ch. 120, F.S., the Administrative Procedure Act, must comply with the notice and publication requirements of that act. *See, e.g.,* s. 120.525, F.S. Those requirements, however, are imposed by Ch. 120, F.S., not s. 286.011, F.S., although the notice of a board or commission meeting published 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).

5. Public comment

Prior to the adoption of s. 286.0114, F.S. (2013), Florida courts had determined that s. 286.011, F.S., provides a right to attend public meetings, but does not provide a right to be heard.

See Herrin v. City of Deltona, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase "open to the public" as used in s. 286.011, F.S., means that "meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings"). *See also Keesler v. Community Maritime Park Associates, Inc.,* 32 So. 3d 659 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010).

However, as the court observed in *Herrin*, s. 286.0114(2), F.S., now mandates that "[m]embers of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission." The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity "occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action." Section 286.0114(2), F.S.

The terms "proposition" or "official action" are not defined in the statute, nor is there a distinction between official action taken at a formal meeting versus an informal setting, such as a workshop. Inf. Op. to Jacquot, April 25, 2014. "In light of the purpose of the statute to allow public participation during the decisionmaking process on a proposition, it should be liberally construed to facilitate that purpose." *Id.*

Section 286.0114(3), F.S., states that the public's "opportunity to be heard" does not apply to:

1. An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
3. A meeting that is exempt from s. 286.011; or
4. A meeting during which the board or commission is acting in a quasi-judicial capacity. *See* AGO 17-01 (s. 286.0114, F.S., does not require that members of the public be given a reasonable opportunity to be heard at quasi-judicial code enforcement hearings held by a special magistrate pursuant to authority delegated from the county code enforcement board).

The statute does not prohibit a board or commission from "maintaining orderly conduct or proper decorum in a public meeting." Section 286.0114(2), F.S. In addition, the opportunity to be heard is "subject to rules or policies adopted by the board or commission" as provided in s. 286.0114(4), F.S. These rules or policies are limited to those that:

1. Provide guidelines regarding the amount of time an individual has to address the board or commission;
2. Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
3. Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
4. Designate a specified period of time for public comment.

If a board or commission adopts such rules or policies and complies with them, it is deemed to be acting in compliance with the statute. Section 286.0114(5), F.S. *See Larson v. Palm Beach County*, No. 502016CA001706 (Fla. 15th Cir. Ct. September 26, 2019), *per curiam affirmed*, 311 So. 3d 853 (Fla. 4th DCA 2021), available online in the Cases database at the open government site at myfloridalegal.com, upholding a board procedural rule giving members of the

public three minutes to speak on all items on the consent agenda versus three minutes on each regular agenda item. *And see City of Miami v. Airbnb, Inc.*, 260 So. 3d 478, 483-484 (Fla. 3d DCA 2018)(temporary injunction prohibiting city from requiring speakers at public hearings to give their names and addresses was overbroad). *Cf. Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (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 *Moms for Liberty-Brevard County v. Brevard Public Schools,* 582 F. Supp. 3d 1214 (M. D. Fla. 2022), *affirmed,* No. 22-10297 (11th Cir. November 21, 2022). *Compare Lozman v. City of Riviera Beach, Fla.*, 138 S.Ct. 1945 (2018), in which the U.S. Supreme Court held that the existence of probable cause for a speaker's arrest for failure to follow the city council's rules of procedure did not bar the speaker's First Amendment retaliation claim.

A circuit court is authorized to issue injunctions for the purpose of enforcing s. 286.0114, F.S. Section 286.0114(6), F.S. However, an action taken by a board or commission which is found to be in violation of that statute is not void as a result of the violation. Section 286.0114(8), F.S.

6. Restrictions on public attendance

a. 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. 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. *Cf. Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa,* 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, "there is legal support for that proposition").

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 other's presentations. *See now* s. 286.0113(2), F.S., providing an exemption from the Sunshine Law for any portion of a meeting at which a vendor makes an oral presentation or answers questions as part of a competitive solicitation, and requiring a complete recording of the exempt portion of the meeting.

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).

c. Inaudible discussions

A school district advisory committee violated the Sunshine Law when it conducted "breakout sessions" where the members discussed committee business at two separate tables which meant that members at one table could not hear what was being discussed at the other table and members of the public could not hear what was being discussed at the sessions. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com. *And see* AGO 71-159 (cautioning against discussions of public business which are audible only to "a select few" who are at the table with board members). *Cf. Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com (two members of a civil service board violated the Sunshine Law when they held a private discussion concerning a pending employment appeal during a recess of a board meeting).

7. Time and length of meeting

In *Greenbarg v. Metropolitan Dade County Board of County Commissioners,* 618 So. 2d 760 (Fla. 3d DCA 1993), the court held that there was "no impropriety" when a county commission continued to meet until the "early morning hours."

8. Use of 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 . . . ." *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").

9. Voting

a. Abstention

Section 286.012, F.S., provides:

> A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is

> to be taken or adopted may not abstain from voting . . . and a vote *shall* be recorded or counted for each such member present, unless, 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, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is or appears to be a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice. (e.s.)

A member of a state, county, or municipal board who is present at a meeting is thus prohibited from abstaining from voting except as authorized in s. 286.012, F.S. *See* AGO 02-40 (s. 286.012, F.S., applies to advisory board appointed by a county commission). *Cf.* Inf. Op. to Dickens, August 10, 2006 (nothing in the language of s. 286.012 indicates that a member who temporarily absents himself or herself from the dais [but is still present in the meeting room] during a vote should be recorded as an affirmative vote).

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). *And see* Inf. Op. to Dickens, *supra* (failure of a member to vote does not render a voted matter invalid if a quorum is present and the required number of affirmative votes have been cast by the voting members).

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.

Questions as to what constitutes a conflict of interest and when board members are prohibited from voting under the above statutes should be referred to the Florida Commission on Ethics.

b. Proxy votes

In the absence of statutory authority, proxy voting by board members is not allowed. AGO 78-117.

c. Roll call vote

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.

d. Written or secret ballot

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 chair and other officers of the board).

However, 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.

In addition, because the Sunshine Law expressly requires that public meetings be open to the public "at all times," after the ballots are marked, the person who tallies the votes should announce the names of the persons who voted and their votes. For example, a judge found that a board violated the Sunshine Law when the board members' individual votes for each applicant were not announced at the public meeting. According to the court, "[t]he fact that the ballots are preserved as public records available for public inspection does not satisfy the requirement of openness." *Schweickert v. Citrus County Port Authority,* No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), available online in the Cases database at the open government site at myfloridalegal.com. *See also* AGO 71-32 (if at any time during a public meeting, the proceedings become "covert, secret or not wholly exposed to the view and hearing of the public," that portion of the meeting is not "open to the public at all times").

E. STATUTORY EXEMPTIONS

1. 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. *And see* s. 286.0111, F.S. (provisions of s. 119.15 "apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15").

2. Exemptions are 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); and *Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), rejecting an agency's argument that a statute providing an exemption for "[a]ny portion of team meeting at which negotiation strategies are discussed" covered the entirety of any meeting at which negotiation strategies were discussed.

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."). Stated another way, "[w]hen in *any* doubt as to whether a meeting or communication, either directly or indirectly between two or more government officials may be illegal under the Sunshine Law, the easy answer is: "LEAVE." *Parris v. State,* 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., specially concurring).

3. Effect of statutory exemptions

a. Notice requirements

If a statute exempts meetings from the requirements of s. 286.011, F.S., the meetings are also exempt from the notice provisions in that statute that would otherwise apply. AGO 93-86. *Accord* AGO 07-28.

b. Attendance at closed meetings

In some cases, a statutory exemption specifies the persons who are permitted to attend a closed session. For example, s. 286.011(8), F.S., establishing an open meetings exemption for certain discussions pertaining to pending litigation, provides that only the entity, the entity's attorney, the entity's chief administrative officer, and a court reporter may attend the closed meeting. *See* AGO 01-10 (clerk of court not authorized to attend).

However, where an exemption for certain public hospital board meetings relating to a "written strategic plan" did not specify who may attend (other than a court reporter), the Attorney General's Office recommended that the board "strictly limit attendance to only those individuals who are essential to the purpose of the meeting, *i.e.*, to discuss, receive a report on, modify, or approve a strategic plan, in order to avoid what the courts might consider to be a disclosure to the public." AGO 07-28. *And see* AGO 06-34 (members of a 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).

c. Disclosure of matters discussed at closed meeting

In a 2014 informal opinion, the Attorney General's Office considered whether the unauthorized disclosure by a council member of information discussed during a closed "shade meeting" held pursuant to s. 286.011(8), F.S., would violate the Sunshine Law or have other legal consequences. The opinion concluded that the prohibitions and penalties for violation of the Sunshine Law that are set forth in s. 286.011(3), F.S., appear to be directed only at persons who attend closed meetings that should have been open to the public. *See* Inf. Op. to Pritt, November 26, 2014. Accordingly, the Attorney General's Office was unable to conclude that unauthorized disclosure of matters disclosed at a valid closed session would violate the Sunshine Law. *Id.* However, other statutory provisions, such as ss. 112.313(8), 112.51, or 839.26, F.S., relating to disclosure of privileged information could apply to this situation. *Id. And see* AGO 03-09 (exemption for collective bargaining strategy sessions in s. 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).

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.

F. REMEDIES AND PENALTIES

1. Criminal penalties

A knowing violation of the Sunshine Law is a misdemeanor of the second degree. Section 286.011(3)(b), F.S. *See Carlson v. Florida Department of Revenue*, 227 So. 3d 1261, 1263 (Fla. 1st DCA 2017), declaring that the Sunshine Law is "serious business," because "there is criminal liability for officials who knowingly disregard it." *Cf. Parris v. State,* 359 So. 3d 1178 (Fla. 4th DCA 2023), upholding a conviction for violating the Sunshine Law because sufficient evidence showed that a councilmember "knowingly participated in a meeting that was not 'open to the public' and for which 'reasonable notice' was not given."

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 Florida 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. (municipal officers) and Art. IV, s. 7, Fla. Const. (state and county officers). *And see Thompson v. Napotnik,* 923 So. 2d 537, 540 (Fla. 5th DCA 2006) (violation of the Sunshine Law can constitute malfeasance for purposes of s. 100.361(2)(d), F.S., providing grounds for recall of elected municipal officers).

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. It has been held that 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), in which the circuit court found that no right to a jury trial is triggered when an individual faces a noncriminal charge of violating 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,* No. GF05-(001122-001130,001135)-BA (Fla. 10th Cir. Ct. December 22, 2006), available online in the Cases database at the open government site at myfloridalegal.com (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). *Compare, State v. Dorworth,* No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), *affirmed,* No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), available online in the Cases database at the open government site at myfloridalegal.com, dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney "expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens."

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 court 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. 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. *See Allen v. United Faculty of Miami-Dade College,* 197 So. 3d 604 (Fla. 3d DCA 2016) (Public Employees Relations Commission [PERC] properly dismissed unfair labor practice charge alleging a violation of the Sunshine Law, as s. 286.011, F.S., is enforceable only by the courts, not by PERC). *Cf. Godheim v. City of Tampa*, 426 So. 2d 1084, 1088 (Fla. 2d DCA 1983), rejecting an argument that Godheim lacked standing to raise a Sunshine Law violation, and finding that the Sunshine Law on its face gives him standing without regard to whether he suffered a special injury. *Accord Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021) ('The School Board concedes on appeal that the trial court erred in ruling that the Plaintiffs lacked standing," citing *Godheim*).

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).

Although a court cannot issue a blanket order enjoining any violation of the Sunshine Law based upon a finding that the law was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. *See Board of Public Instruction of Broward County v. Doran,* 224 So. 2d 693, 699-700 (Fla. 1969), *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995), and *Citizens for Sunshine, Inc. v. Martin County School Board,* 125 So. 3d 184 (Fla. 4th DCA 2013). *See also 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."

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." *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1, supra,* quoting from *Board of Public Instruction v. Doran,* 224 So. 2d 693, 699 (Fla. 1969). *And see Lozman v. City of Riviera Beach,* No. 502007CA007552XXXXMB (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed,* 46 So. 3d 573 (Fla. 4th DCA 2010), available online in the Cases database at the open government site at myfloridalegal.com (injunctive relief against 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). *Accord Sarasota Citizens For Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010), noting that "where officials have violated section 286.011, the official action is void ab initio." *See 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.); *Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 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); and *Brown v. Denton,* 152 So. 3d 8 (Fla. 1st DCA 2014), (upholding trial court ruling that voided an agreement reached after closed-door mediation sessions which resulted in changes to pension benefits of city employees in certain unions). *Compare* s. 286.0114(8), F.S. (an action taken by a board or commission which is found to be in violation of s. 286.0114, F.S. [providing a right to be heard on a proposition before a state or local board or commission] "is not void as a result of that violation").

Similarly, a circuit judge found that where two members of civil service board held a private discussion about a pending case during a recess, the board's subsequent findings in the case were "null and void" and the city must reconvene the board and hear the evidence de novo. *Citizens for Sunshine, Inc. v. City of Sarasota,* No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. *And see Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of*

Tampa, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, "there is legal support for that proposition").

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 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).

Similarly, a school board remedied an inadvertent violation of the Sunshine Law when it subsequently held full, open and independent public hearings prior to adopting a redistricting plan. *Finch v. Seminole County School Board,* 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008). *And see Sarasota Citizens for Responsible Government v. City of Sarasota,* 48 So. 3d 755 (Fla. 2010) (any possible violations that occurred when county commissioners circulated e-mails among each other were cured by four subsequent public meetings involving discussion of multiple proposals); *Jackson v. City of Tallahassee*, 265 So. 3d 736 (Fla. 1st DCA 2019) (public city commission meeting to fill a vacancy on the commission, which included a full discussion of the appointment, candidate presentations, more than an hour of public comment, and numerous speakers, cured any purported violation that may have occurred during the application process). *Cf. Anderson v. City of St. Pete Beach,* 161 So. 3d 548, 553-554 (Fla. 2d DCA 2014), noting that "even when an illicit action is 'cured' it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine."

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). *See also Anderson v. City of St. Pete Beach,* 161 So. 3d at 553 (city failed to cure Sunshine Law violation since it merely perfunctorily ratified in public session what had already been decided in closed meetings).

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.

More recently, the Fourth District reversed an order granting summary judgment in favor of a city which claimed that a special meeting cured an alleged Sunshine Law violation arising from approval of a separation agreement for the departing city manager. The court observed that the entire proceeding lasted less than 15 minutes and "no one mentioned the terms of the agreement, nor did they discuss at length the reasons for the termination." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 786 (Fla. 4th DCA 2018). According to the court, "[t]he meeting may be more perfunctory . . . than the meeting in *Zorc." Id. And see Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com (minutes of school board meeting did not go into enough depth to carry the school district's burden of proving a cure of an advisory committee's violation of the Sunshine Law; the violation can be remedied only when all matters previously considered by the advisory committee are brought by independent action into the sunshine). *Cf.* AGO 12-31 (audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate entity; the committee may not, therefore, ratify a defective request for proposals which was created and issued by the county's financial officer contrary to the requirements of the law).

Similarly, a school board's argument that it had cured Sunshine violations committed by its textbook committees because it held two public board meetings on the textbook recommendations, and also posted all the materials online, was rejected based on a finding that the board had failed to hold "a full and open hearing" on the recommendations. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021). The court found it significant that under a school board policy, the board could not choose a textbook on its own by considering other alternatives from the textbooks previously considered by the committee. Instead, if the board rejected a textbook, the matter would go back to the textbook committee for a new review and recommendation.

Moreover, an appellate court warned that while subsequent public board meetings may have "cured" a Sunshine Law violation, "if a pattern of Sunshine Law violations existed before this violation, then perhaps we may have found that any subsequent school board actions were merely 'perfunctory ratification[s] of secret actions and decisions.'" *Citizens for Sunshine, Inc. v. Martin County School Board,* 125 So. 3d 184, 189 (Fla. 4th DCA 2013). *See Bert Fish Foundation v. Southeast Volusia Hospital District,* No. 2010-20801-CINS (Fla. 7th Cir. Ct. February 24, 2011), available online in the Cases database at the open government site at myfloridalegal.com (series

of public meetings did not "cure" Sunshine Law violations that resulted from 21 closed door meetings over 16 months; "[t]here was so much darkness for so long, that a giant infusion of sunshine might have been too little or too late").

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. 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. Access to public records has been described as a "cornerstone of our political culture." *In re Report & Recommendations of Judicial Mgmt. Council of Fla. on Privacy & Elec. Access to Court Records,* 832 So. 2d 712, 713 (Fla. 2002).

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.

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.

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). Exemption summaries are found in Appendix D.

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. *And see National Collegiate Athletic Association v. 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"). *Cf. Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records because in order to constitute a "public record" for purposes of Ch. 119, "the record itself must be susceptible of some form of copying . . . .").

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 public inspection unless exempted by law.

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."); and *Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851, 855 (Fla. 1st DCA 2013) ("A citizen's access to public records is a fundamental constitutional right in Florida"). The complete text of Art. I, s. 24, Fla. Const., the Public Records and Meetings Amendment, may be found in Appendix A.

B. WHAT ENTITIES ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:

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"); and *Schwartzman v. Merritt Island Volunteer Fire Department,* 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied,* 358 So. 2d 132 (Fla. 1978) (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" for purposes of the Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

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. *And see* s. 20.41(8), F.S., providing that area agencies on aging, described as "nongovernmental, independent, not-for-profit corporations" are "subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings."

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); and *Times Publishing Company v. Acton,* No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999), available online in the Cases database at the open government site at myfloridalegal.com (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 commission 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). *Cf.* 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).

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.,* 39 So. 3d 1280 (Fla. 5th DCA 2010). Each of these circumstances or tests is 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" test to serve 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). *See New York Times Company v. PHH Mental Health Services, Inc.,* 616 So. 2d 27 (Fla. 1993); *Wells v. Aramark Food Service Corporation,* 888 So. 2d 134 (Fla. 4th DCA 2004).

Accordingly, 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.

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.

For example, in AGO 92-37 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.), 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., subject to Public Records Act), and 11-01. *Cf.* Inf. Op. to Goodman, September 26, 2016 (in the absence of a request from the chief of the volunteer fire department or additional information making the relationship between the town and the fire department clearer, the Attorney General's Office may not respond formally to town attorney's inquiry about the application of the Public Records Act to the town's volunteer fire department).

By contrast, an architectural firm providing architectural services associated with construction of school facilities was found to be outside the scope of the Public Records Act. *See News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., supra. See also 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), available online in the Cases database at the open government site at myfloridalegal.com (private security force providing services on Walt Disney World property, including traffic control and accident reports is not subject to Ch. 119), *Trepal v. State,* 704 So. 2d 498 (Fla. 1997) (soft drink company cooperating with law enforcement in the testing of soda bottles during an investigation of a poisoning death is outside the scope of the Public Records Act); and Inf. Op. to Michelson, January 27, 1992 (telephone company supplying cellular phone services to city officials for city business is not an "agency" since the 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). *Cf. National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 182 (Fla. 1st DCA 2017) (trial court conclusion that insurance rating organization violated Public Records Act was erroneous because the court "expressly declined to apply the *Schwab* factors" prior to making this determination).

Stated another way, "[a] private entity *does not* act on behalf of a public agency merely by entering a contract to provide professional services to the agency." *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021) [Emphasis supplied by the court]. Thus, the Public Records Act did not apply to a private corporation providing health care services pursuant to a contract with a state agency because the private corporation was not created pursuant to any governmental action, the amounts paid were all paid in consideration for professional services already rendered, and the agency did not delegate any decision-making authority to the corporation, nor did it control or regulate the corporation's professional activity or judgment. *Id. And see National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 182 (Fla. 1st DCA 2017) (trial court conclusion that insurance rating organization violated Public Records Act was erroneous because the court "expressly declined to apply the *Schwab* factors" prior to making this determination).

(2) Delegation of function 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 see Weekly Planet, Inc. v. Hillsborough County Aviation Authority,* 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

For example, if a private 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 apply. *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 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"); and *Fox v. News-Press Publishing Company,* 545 So. 2d 941, 943 (Fla. 2d DCA 1989) (upholding a trial court decision finding that business records maintained by a towing company in connection with its contract with a city were public records, as the company "was clearly performing what is essentially a governmental function, i.e., the removal of wrecked and abandoned automobiles from public streets and property"). *See also* AGOs 08-66 (Public Records Act applies to not-for-profit corporation contracting with city to carry out affordable housing responsibilities and screening applicant files for such housing); 99-53 (while not generally applicable to homeowners associations, Ch. 119 applies to an 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 Act when acting on behalf of the taxing unit). *Compare* 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).

Thus, in *Stanfield v. Salvation Army,* 695 So. 2d 501 (Fla. 5th DCA 1997), the Fifth District recognized that the delegation of function test was the appropriate standard to use to determine that records generated by the Salvation Army in performing a contract to provide misdemeanor services for a county were subject to Ch. 119, F.S. As stated by the court: "Because we find the statutory and contractual delegation of governmental responsibility so compelling in this case, it is unnecessary to engage in the factor-by-factor analysis outlined in *Schwab*." *Stanfield,* 695 So. 2d at 503. *B & S Utilities v. Baskerville-Donovan Inc.,* 988 So. 2d. 17, 21 (Fla. 1st DCA 2008), citing to *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.,* 729 So. 2d 373 (Fla. 1999). In *Baskerville,* the court recognized that while the "totality of factors" test favored a private engineering firm's position that it was not an agency, "the fact that the City delegated its municipal engineering functions" to [the firm] "is *dispositive*." *Baskerville,* 988 So. 2d at 22. (e.s.)

The following are other examples of private businesses and nonprofit entities which were delegated a governmental function and thus determined to be subject to the Public Records Act in carrying out that function:

> **Corrections company operating county jail:** *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), available online in the Cases database at the open government site at myfloridalegal.com. *And see 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) (medical services).
>
> **Employment search firm:** *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.* 379 So. 2d 633 (Fla. 1980). *Accord* AGO 92-80 (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).
>
> **Humane society investigating animal abuse for county:** *Putnam County Humane Society, Inc. v. Woodward,* 740 So. 2d 1238 (Fla. 5th DCA 1999).

However, the "delegation of function" test should not be used unless there is a "clear, compelling, complete delegation of a governmental function" to the private entity. *Economic*

Development Commission v. Ellis, 178 So. 3d 118, 123 (Fla. 5th DCA 2015). In *Ellis,* the Fifth District found that the trial judge should not have used the delegation test to determine whether a private economic development entity (EDC) under contract with the county to provide services was an "agency." The appellate court explained that the EDC was the county's "primary" but not its "sole" agency for economic development activity. *Id.* The county "continued to carry out economic development activities itself through its own paid county employees and in conjunction with other entities to the exclusion of EDC." *Id.* In other words, "EDC did not take over the county's role or completely assume the county's provision of economic development services." *Id.* Because "EDC provided services to, not in place of, the county," the trial judge should have applied the "totality of factors" test instead of the "delegation of function" test. *Id.*

c. Private company delegated authority to keep certain records

If a public agency has delegated its responsibility to maintain records necessary to perform its functions, such records have been deemed to be 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 the company the responsibility of maintaining records necessary to show compliance with a "fairness in procurement ordinance," the company's records for this purpose were public records). *See also 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).

d. Subcontractors

A circuit court has addressed whether a subcontractor may be subject to the Public Records Act if both the subcontractor and contractor have been delegated a public function. In *Multimedia Holdings Corporation v. CRSPE, Inc.,* No 03-3474-G (Fla. 20th Cir. Ct. December 3, 2003), available online in the Cases database at the open government site at myfloridalegal.com, the court required a consulting firm to disclose its timesheets 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."

e. Other statutory provisions governing records of private entities

(1) Contract requirements

Section 119.0701, F.S., mandates that all agency contracts for services must contain specific provisions requiring the contractor to comply with public records laws, including retention and public access requirements. The term "contractor" is defined to mean "an individual, partnership, corporation or business entity that enters into a contract for services with a public agency *and* is acting on behalf of the public agency as provided under s. 119.011(2), [F.S.]." Section 119.0701(1)(a), F.S. (e.s.). "Thus, based on the terms of section 119.0701(1)(a), Florida Statutes, the nature and scope of the services provided by a private contractor determine whether he or she is 'acting on behalf of' an agency and thus, would be subject to the requirements of the statute." AGO 14-06. For more information on when a private entity is determined to be "acting on behalf of" a public agency for purposes of s. 119.011(2), F.S., please refer to the preceding discussion on pages 62-65.

In addition, contracts entered into or amended after July 1, 2016, must contain a statement, in the form prescribed by the statute, providing the contact information for the public

agency's custodian of public records in the event that the contractor has questions about its duty to provide public records relating to the contract. Section 119.0701(2)(a), F.S. A request for records for records relating to the contract must be made directly to the public agency. Section 119.0701(3)(a), F.S. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time. *Id.* Sections 119.0701(3) and (4), F.S., establish consequences in the event of a contractor's noncompliance.

Section 287.058(1)(c), F.S., provides, 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.

(2) Legislative appropriation

Section 11.45(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).

(3) 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. 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); *State v. Wooten*, 260 So. 3d 1060, 1069 (Fla. 4th DCA 2018) ("Access to judicial branch records is governed by the rules and decisions of the Florida Supreme Court, not Chapter 119, Florida Statutes."); 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." *And see C.H.-C v. Miami Herald Publishing Co.*, 262 So. 3d 226 (Fla. 3d DCA 2018) (trial court did not abuse its discretion in finding that newspaper had proper interest in access to redacted transcript of judicial review dependency hearing involving minor children).

b. Public access to and protection of judicial branch records, Fla. R. Gen. Prac. & Jud. Admin. 2.420

(1) Scope of the rule

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. In accordance with this directive, access to records of the judicial branch is governed by Florida Rule of General Practice and Judicial Administration 2.420, entitled "Public Access to and Protection of Judicial Branch Records." *See* 2.420(a), Fla. R. Gen. Prac. & Jud. Admin., providing that "[t]he public shall have access to all records of the judicial branch of government except as provided [in the rule]." *Cf. Morency v. State*, 223 So. 3d 439 (Fla. 5th DCA 2017), noting that "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" are included within the scope of the rule; and *Wright v. State*, 324 So. 3d 1282 (Fla. 1st DCA 2021) (defendant entitled to obtain electronic records of plea hearing to the extent that such records exist).

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").

An online version of Fla. R. Gen. Prac & Jud. Admin. 2.420 is also available at: www.floridabar.org.

(2) Confidential judicial records

Rule 2.420(c)(1) through (6) lists confidential 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.

Rule 2.420(d)(1) states that except as provided in subdivision(d)(1)(C), the clerk of 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 the rule. Subdivision (A) references "information described by any of the subdivisions (c)(1) through (c)(6)." Subdivision (B) contains a list of specific statutory exemptions. Subdivision (d)(1)(C) states that in "civil cases" as that term is defined in the rule, the clerk shall not be required to designate and maintain information as confidential unless the filer follows the notice procedures set forth in subdivision (d)(2), the filer files a Motion to Determine Confidentiality of Court Records as set forth in subdivision (d)(3), the filing is deemed confidential by court order, or the case itself is confidential by law. *Cf.* s. 119.0714(2)(g), F.S., providing that the clerk of court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk.

Although rule 2.420(c)(1)-(6) lists specific confidential records, subdivision (c)(8) of the rule provides a general exemption from disclosure for records presently deemed to be confidential by court rule, Florida Statutes, prior Florida case law, and by rules of the Judicial Qualifications Commission. *See State v. Buenoano,* 707 So. 2d 714, 718 (Fla. 1998). In addition, Fla. R. Gen. Prac. & 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)(A) of rule 2.420 establishes the grounds for determining confidentiality of a court record. 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 (c)(9)(A). Fla. R. Gen. Prac. & Jud. Admin. 2.420(c)(9)(B). *Cf. Barfield v. Doe*, 348 So. 3d 1156 (Fla. 4th DCA 2022) (while 2.420(c)(9)(A)(vi) allows a court to shield a record from public view when confidentiality is required 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 proceeding sought to be closed," litigants cannot have a reasonable expectation of privacy concerning matters that are inherent to their civil proceeding).

Procedures for judicial determinations of requests for confidentiality of court records and for obtaining access to confidential court records are referenced in rule 2.420(e)-(j). For example, rule 2.420(f)(3) states that "any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record 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)(vii) of this rule may be made in the form of a written motion captioned 'Motion to Determine Confidentiality of Court Records.'"

(3) 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. Gen. Prac. & Jud. Admin. 2.420(m). 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. Gen. Prac. & Jud. Admin. 2.420(m)(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. Gen. Prac. & Jud. Admin. 2.420(m)(2). If the request is denied, the custodian shall state in writing the basis for the denial. *Id.*

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. Gen. Prac. & Jud. Admin. 2.420(l). *See Jacobs Keeley, PLLC v. Chief Judge of the Seventeenth Judicial Circuit,* 169 So. 3d 192 (Fla. 4th DCA 2015). *And see C.H.-C v. Miami Herald Publishing Co.*, 262 So. 3d

226 (Fla. 3d DCA 2018) (trial court did not abuse its discretion in finding that newspaper had proper interest in access to redacted transcript of judicial review dependency hearing involving minor children).

c. 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). *Cf. Lewis v. State,* 958 So. 2d 1027 (Fla. 5th DCA 2007) (*Burk* applies to a request for unfiled depositions made during an ongoing, active criminal prosecution but does not extend to a defendant's request for deposition transcripts after the conviction becomes final; such transcripts must be produced in accordance with Ch. 119, F.S.). *And 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." *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).

Thus, in *Florida Freedom Newspapers, Inc. v. McCrary,* 520 So. 2d 32 (Fla. 1988), 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).

d. 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).

e. 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.

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. *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 Shevin v. Byron, Harless, Schaffer, Reid and Associates Inc.,* 379 So. 2d 633 (Fla. 1980).

f. 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. 905.28, 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. Similarly, a circuit court held that the list of grand jurors is confidential. *Wood v. Childers,* No. 13-CA-000877 (Fla. 1st Cir. Ct. April 16, 2013), *per curiam affirmed,* 130 So. 3d 1282 (Fla. 1st DCA 2014) available online in the case database at myfloridalegal.com. *Accord* 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). However, although s. 905.27, F.S., "addresses grand jury proceeding secrecy and non-disclosure, it also specifically recognizes a court's inherent authority to order disclosure." *CA Florida Holdings, LLC v. Aronberg,* 360 So. 3d 1149 (Fla. 4th DCA 2023). *And 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). *Cf. In re: Final Report of the 20th Statewide Grand Jury*, 343 So. 3d 584 (Fla. 4th DCA 2022) (s. 905.395 F.S., does not prohibit statewide grand jury from including witness testimony in the report it intends to release).

(2) Trial jury

In *Kever 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); and *WPTV-TV v. State,* 61 So. 3d 1191 (Fla. 5th DCA 2011) (given exceptional media coverage and public interest in upcoming criminal trial, trial court's decision to withhold location of jury selection until a time proximate to the start of the trial was not a material departure from essential requirements of law).

g. 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 State v. American Tobacco Company,* No. CL 95-1466-AH (Fla. 15th Cir. Ct. July 28, 1997), available online in the Cases database at the open government site at myfloridalegal.com (upholding constitutionality of Sunshine in Litigation Act).

Additionally, s. 69.081(8), F.S., provides, 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. Settlement records must be maintained in compliance with Ch. 119, F.S. *See* Inf. Op. to Barry, June 24, 1998 (agency not authorized to enter into a settlement agreement authorizing the concealment of information relating to an adverse personnel decision from the remainder of a personnel file.

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. 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 for 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.

In accordance with Art. I, s. 24(c), Fla. Const., the Senate and House of Representatives have adopted rules relating to records of the legislative branch. These rules may be accessed online at www.flsenate.gov (Florida Senate) and www.myfloridahouse.gov (Florida House of Representatives).

In addition, s. 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 E. *See League of Women Voters v. Florida House of Representatives,* 132 So. 3d 135, 153 (Fla. 2013) ("We agree that the first issue to be decided is whether the draft [apportionment] plans fall within the scope of the public records exemption in section 11.0431[2][e], Florida Statutes [2012], and that this exemption should be strictly construed in favor of disclosure"). *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).

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 former Parole and Probation Commission [now known as the Florida Commission on Offender Review] 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. *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 Public Records Act does not apply to the clemency investigative files and reports produced by the Florida Commission on Offender Review [formerly 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). *And see* AGO 86-50.

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 [now known as the Florida Commission on Offender Review] 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).

C. WHAT RECORDS ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:

This section discusses the application of the Public Records Act to various records made or received by agencies in the course of official business. Many, but not all of the statutory exemptions to disclosure for particular records or information are also referenced. For a more complete listing of statutory exemptions, please refer to Appendices C and D and the Index.

1. Adoption and birth records

Except for birth records over 125 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 also confidential and may not be disclosed except as provided in s. 63.162, F.S. *And see* s. 63.165(1), F.S. (state adoption registry); and s. 63.0541, F.S. (putative father registry).

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).

2. Autopsy and death records

a. Autopsy reports

Autopsy reports made by a district medical examiner pursuant to Ch. 406, F.S., are generally public records and are open to the public for inspection in the absence of an exemption. AGO 78-23. *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. *Cf. Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records).

However, an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt. Section 406.135(2)(b), F.S. Specific disclosures are authorized as provided in the exemption. *Id.*

Moreover, "[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 apply to an autopsy report. 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)(a), 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.)

c. Photographs, video and audio recordings that depict or record the killing of a law enforcement officer, or the killing of a minor, or the killing of a victim of mass violence

A photograph or video or audio recording that depicts or records the killing of a law enforcement officer acting in accordance with his or her official duties, or the killing of a minor, or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1), F.S., and may not be disclosed except as authorized in the exemption. Section 119.071(2)(p), F.S. For more information please refer to the discussion on pages 125-126.

d. 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. *And see* s. 28.2221(5)(a), F.S. (clerk of court not authorized to place certain records, including death certificates, on a publicly available Internet website); s. 382.008(8), F.S. (confidential information in nonviable birth certificates). *Cf. Department of Health v. Rehabilitation Center at Hollywood Hills, LLC*, 259 So. 3d 979, 982 (Fla. 1st DCA 2018), overturning the lower court's order holding the agency in contempt for failing to produce death certificates of all Floridians who died within a specified time period because, among other things, the final judgment "failed to take into account the confidential or exempt status of information in the death certificates it ordered the Department to produce").

Section 382.025(2)(a), F.S., provides for the Department of Heath to authorize the issuance of a certified copy of all or part of a death or fetal death certificate, excluding the portion that is confidential pursuant to s. 382.008, F.S., upon payment of the fee prescribed by that section. The statute also specifies 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.

3. Child and vulnerable adult abuse and protection records

a. Department of Children and Families abuse records

(1) Confidentiality of abuse records

Generally, reports of abused children or vulnerable adults which are received by the Department of Children and Families (DCF) are confidential and exempt from disclosure, except as expressly provided by statute. *See* ss. 39.202(1) and 415.107(1), F.S.

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(2)(b), F.S., providing that any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, or which reveals the identity of the surviving siblings, family members, or others living in the home of such deceased child is confidential and exempt from disclosure requirements. In addition, the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential. Section 383.412(2)(a), F.S.

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. *And see* s. 415.1103(10)(a), F.S. (information contained in a record created by an elder or vulnerable adult fatality review team that reveals the identity of a victim of abuse, exploitation or neglect or the identity of persons responsible for the welfare of such victim is confidential and exempt from disclosure requirements).

(2) 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 39.2021(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. *Cf.* s. 39.202(7), F.S. (duties of custodians of records made confidential under s. 39.202 to provide access as requested by legislative committee acting under s. 11.43, F.S.).

In addition, "it is the intent of the Legislature to provide prompt disclosure of the basic facts of all deaths of children from birth through 18 years of age which occur in this state and which are reported to the [DCF] central abuse hotline." Section 39.2022(1), F.S. Disclosure shall be posted on the DCF public website. *Id.* Section 39.2022(2), F.S., lists the information about the child which must be posted.

b. Foster home, licensure and quality assurance records

Records relating to licensure of foster homes, or assessing how the Department of Children and Families 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 reference 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).

c. Guardians ad litem and court monitors

Section 39.0132(4)(a)2., F.S., establishes confidentiality for specified information held by a guardian ad litem. *And see* s. 744.2104(2), F.S. (confidentiality of records held by the Office of Public and Professional Guardians 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(1)(b), F.S. (except as provided in the exemption, reports of court monitors or emergency court monitors which relate to the medical condition, financial affairs, or mental health of the ward are confidential); s. 744.2103 (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); and s. 744.3701, F.S. (court records relating to settlement of a ward or minor's claim).

d. Status of abuse records held by law enforcement agencies

For information regarding the status of abuse records held by law enforcement agencies in the course of a criminal investigation, please refer to the discussion in s. C. 15 relating to law enforcement records.

4. Direct-support organizations

Direct-support organizations established by or pursuant to law to support the efforts of public agencies have been found to be subject to the open government laws. *See* AGOs 92-53 (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 must comply with open government laws), 11-01 (nonprofit corporation created by municipality and described as its "fundraising arm" subject to open government laws); and 05-27 (Sunshine Law applies to Florida College System institution [formerly community college] direct-support organization as defined in s. 1004.70, F.S.). *Cf.* s. 20.058, F.S., requiring that citizen support organizations or direct-support organizations created or authorized by law or executive order and created, approved, or administered by an agency must submit specified information to the agency which shall then post the information on the agency's website.

However, the Legislature has enacted exemptions for information identifying *donors* to certain direct-support organizations. For example, the identity of donors to a direct-support organization 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. 1001.453(4), F.S.

More commonly, however, the statutory exemption applies only to the identity of donors who wish to remain anonymous. *See, e.g.,* s. 570.691(6), F.S. (identity of a donor or prospective donor to the direct-support organizations authorized to support programs in the Department of Agriculture and Consumer Services "who desires to remain anonymous and all information identifying such donor or prospective donor" is confidential). *Cf.* s. 265.7015, F.S. (if the donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt).

The identity of donors to a university direct-support organization who wish to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report of the organization. Section 1004.28(5)(a), F.S. Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to

the expenditure of private funds for travel, all records of a university direct-support organization 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)(b), F.S.

By contrast, s. 1004.70(6), F.S., provides that records of the Florida College System institution 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. *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).

For more information on exemptions for particular direct-support or citizen-support organizations, please consult Appendix D or the Index.

5. Domestic violence and stalking records

Information about clients received by the Department of Children and Families 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. *And see* ss.784.046 (4) (b) (repeat violence, sexual violence or dating violence) and s. 784.0485(3)(b) (stalking). In addition, a petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to a failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from disclosure. Section 119.0714(1)(k)1., F.S. Prior to July 1, 2017, the petition is exempt only upon request by an individual named in the petition as a respondent. Section 119.0714(1)(k)2., F.S. *And see* s. 119.0714(1)(k)3., F.S., providing confidentiality for information that can be used to identify the petitioner or respondent until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

Section 406.135(2)(b), F.S., provides that an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt. Disclosure is authorized under specified circumstances, as provided in s. 406.135(2) and (3), F.S.

A victim of domestic violence or aggravated stalking may file a 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 exempted from disclosure. Section 119.071(2)(j)1., F.S. For more information on this exemption, please refer to the discussion on pages 122-123. *And see* s. 741.313(7), F.S. (personal identifying information contained in records documenting an act of domestic violence or sexual violence that is submitted to an agency by an employee seeking to take leave under the requirements of s. 741.313, F.S., is confidential and exempt; a written request for leave submitted by an employee and an agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken). *See also* 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).

The addresses, telephone numbers, and social security numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence Program [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. *And see* s. 741.4651, F.S. (names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking are exempt from public disclosure requirements in the same manner that the names, addresses and telephone numbers of participants in the Program which are held by the Attorney General under s. 741.465, F.S, are exempt, provided that the victim files a sworn statement of stalking with the Office of the Attorney General 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.

6. Drafts and notes

There is no "unfinished business" exception to the public inspection and copying requirements of Ch. 119, F.S. As the Florida Supreme Court stated in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.,* 379 So. 2d 633, 640 (Fla. 1980), the term "public record" means "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type." Such material is a "public record" regardless of whether it is in final form or the ultimate product of an agency. *Id.*

Thus, "[i]nteroffice 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 in as much as they supply the final evidence of knowledge obtained in connection with the transaction of official business." 379 So. 2d at 640. *See also 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); and *National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010) (transcript and response prepared as part of NCAA disciplinary proceeding involving state university were public records because the "the purpose of the transcript was to perpetuate the information presented to the infractions committee" and the response "was designed to communicate information to the body that would hear the appeal within the NCAA"). *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").

Accordingly, any agency record, 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 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 remove them from the definition of "public record." When material falls within the statutory definition of "public record" in s. 119.011(12), F.S., and has been prepared to "perpetuate, communicate or formalize knowledge," the record is subject to disclosure even if the agency

believes that release of the nonfinal product could be detrimental. *See, e.g., 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). As with other public records, only the Legislature has the authority to exempt preliminary or draft public records from disclosure. *Wait v. Florida Power & Light Company,* 372 So. 2d 420 (Fla. 1979). *See, e.g.,* s. 119.071(1)(d), F.S., providing a limited work product exemption for agency attorneys.

While the broad definition of the term "public record" ensures that the public's right of access includes preliminary and nonfinal records, the *Shevin* decision recognizes that not every record made or received in the course of official business is prepared to "perpetuate, communicate or formalize knowledge." Accordingly, preliminary drafts or notes prepared for the personal use of the writer may constitute mere "precursors" of public records *if* they are not intended to be the final evidence of the knowledge recorded. *See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla.1980). *And see* the discussion of "attorney notes" on pages 132-133.

Thus, 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.) *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. *See also* AGO 10-55 (handwritten personal notes taken by city manager to assist in remembering matters discussed during manager's interviews of city employees are not public records "if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge"); and 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). *Compare Barfield v. City of Sarasota,* 21 F. L.W. Supp 874 (Fla. 12th Cir. Ct. May 5, 2014), in which the circuit judge ruled that those portions of police officer's notes containing his research on homeless shelters became a public record when he made multiple references to them while answering questions during a presentation at a city commission meeting; however the unread portions of the notes did not become a public record because they were not disseminated.

The relevant test is whether the records have been prepared to "perpetuate, communicate, or formalize knowledge of some type." *See* AGO 05-23, stating that "it is only uncirculated materials that are not in and of themselves intended to serve as the final evidence of the knowledge to be recorded that fall outside of the definition of a public record." *Accord* AGOs 10-55 ("nonfinal documents need not be communicated to anyone in order to constitute a public record") and 04-15 (tape recordings of staff meetings made at the request of the executive director by a secretary for use in preparing minutes of the meeting are public records because "they are made at the request of the executive director as an independent record of the proceedings, and, unlike tapes or notes taken by a secretary as dictation, are intended to perpetuate the discussion at a staff meeting"). *See also* Inf. Op. to Yoder, November 10, 2014 (video recording of a school board meeting which was made at the direction of a school board member "appears to be a record intended to perpetuate the discussion at the meeting").

For example, in *Miami Herald Media Co. v. Sarnoff,* 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a 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. The court determined that the 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. *See also Grapski v. City of Alachua,* 31 So. 3d 193, 197 (Fla.

1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 2010) (canvassing board minutes constitute "final work product of the [b]oard, not a preliminary draft or note"); *City of Pinellas Park, Florida v. Times Publishing Company,* No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001), available online at the open government site at myfloridalegal.com (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 AGO 05-23 (handwritten notes taken by an assistant city labor attorney during her interviews with city personnel that were reviewed by the city's labor attorney, used to prepare a disciplinary action form, and then filed, constituted a public record).

7. Education records

a. 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.).

b. Student records

Public access to student records is limited by statute. In 2009, the Legislature amended the state statutes relating to student records to incorporate the federal Family Education Rights and Privacy Act (FERPA). Section 1002.221(1), F.S., provides that "[e]ducation records as defined in [FERPA], and the federal regulations issued pursuant thereto, are confidential and exempt" from public disclosure and may be released only as authorized in the exemption. "Education records" are defined by FERPA to mean "those records, files, documents, and other materials 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." 20 U.S.C. s. 1232g(a)(4)(A). *Cf.* AGO 10-04 (school board meeting at which student records may be discussed may not be closed to the public in the absence of a statutory exemption from the Sunshine Law; however, "school board should be sensitive to confidential student records that may be reviewed during such a meeting and protect these records to the extent that is possible to protect the privacy of the student involved . . . ."). *Compare* s. 1003.57(1)(c), F.S., providing an exemption from the Sunshine Law for hearings on exceptional student identification, evaluation, and eligibility determination; and s. 1006.07(1)(a), F.S. (student expulsion hearings exempted).

Public postsecondary educational institutions are also 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. See Knight News, Inc. v. University of Central Florida,* 200 So. 3d 125, 128 (Fla. 5th DCA 2016) (personally identifiable information contained within records regarding alleged hazing incidents qualifies as confidential student disciplinary records; however, the names of student government officers charged with malfeasance in the performance of student government duties or alleged to have engaged in misconduct with regard to their election or appointment to their position are not confidential under FERPA because "given the statutory scheme [relating to university student government officers] student government officers know or reasonably should know" that they could be disciplined for misconduct in connection with their student government duties).

In *National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010), the court construed FERPA and the

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," the court found that a transcript of an NCAA hearing and an NCAA committee response pertained to allegations of misconduct by the university athletic department, and only tangentially related to students. Therefore, since the transcript and the response had been redacted to remove student-identifying information and thus did not disclose education records, they were not exempt from disclosure. *And see Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851 (Fla. 1st DCA 2013) (student's *unredacted* email which criticized instructor's classroom performance constituted an exempt education record). *Compare WFTV v. School Board of Seminole County, Florida,* 874 So. 2d 48 (Fla. 5th DCA 2004), *review denied,* 892 So. 2d 1015 (Fla. 2004), concluding that under *prior* student confidentiality laws (which did not incorporate FERPA), a school bus surveillance videotape was a confidential student record and could not be released to the media even with student-identifying information redacted).

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. s. 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."

c. Children in government-sponsored recreation programs

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. A 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." *Id.*

d. School system security—Please see pages 158-159.

e. Testing materials

Testing materials are generally exempt from the disclosure provisions of s. 119.07(1), F.S. *See, e.g.,* s. 1008.23(1)(2), 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). *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(4)(b), F.S. (identity of a school or postsecondary educational institution, personal identifying information of personnel of a school district or postsecondary educational institution, or specific 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).

8. 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"). *Cf. Trout v. Bucher*, 205 So. 3d 876 (Fla. 4th DCA 2016), stating that the supervisor of elections was not required to charge the hourly rate of the lowest paid person capable of providing ballots for inspection because s. 119.07(4)(d), F.S., authorizes the agency to impose a reasonable charge based on labor costs "actually incurred by the agency or attributable to the agency" when extensive clerical or supervisory assistance is required).

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.

Information regarding requests for vote-by-mail ballots that is recorded by the supervisor of elections pursuant to s. 101.62(2),F.S., is confidential and exempt and shall be made available to or reproduced only for the individuals and entities set forth in the exemption, for political purposes only. Section 101.62(2), F.S.

b. Voter registration and voter records

Section 97.0585(1), 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 license number, and the Florida identification number of a voter registration applicant or voter; and all information concerning preregistered voter registration applicants who are 16 or 17 years old. The signature of a voter registration applicant or a voter is exempt from copying requirements. Section 97.0585(2), F.S.. *See also* ss. 741.465(2), F.S. (identifying information concerning participants in the Office of the Attorney General Address Confidentiality Program for Victims of Domestic Violence contained in voter registration and voting records is exempt); and 741.4651, F.S. (exemption for identifying information of stalking victims who have filed a sworn statement of stalking with the Office of the Attorney General and otherwise comply with the procedures set forth in ss. 741.401-741.409, F.S.). *And see* AGO 04-18 (specified officers and employees who are authorized to file a request for exempt status of certain personal information pursuant s. 119.071(4)(d)3., F.S., may request that the supervisor of elections maintain the exempt status of such information contained in petitions or campaign papers).

Section 98.075(2)(b), F.S., allows the Department of State to join a nongovernmental entity composed of state and District of Columbia election officials whose sole purpose is to share and exchange information in order to verify voter registration information. Information received by the department from another state or the District of Columbia which is confidential or exempt pursuant to the laws of that state or the District of Columbia is exempt from disclosure. Section 98.075(2)(c), F.S.

9. Electronic and computer records

a. Electronic databases and files

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). *And see National Collegiate Athletic Association v. 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); 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); 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). *And see Grapski v. Machen,* No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), *affirmed per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007), available online in the Cases database at the open government site at myfloridalegal.com (spam or bulk mail received by a public agency does not necessarily constitute a public record).

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. "Automation of public records must not erode the right of access to [public records]." Section 119.01(2)(a), F.S.

Accordingly, electronic public records are governed by the same rule as written documents and other public records--the records are subject to public disclosure unless a statutory exemption exists which removes the records from disclosure. *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. *And see* the discussion on pages 132-134 noting that in evaluating whether a public official's records were made or received in the course of official business for purposes of Ch. 119, the determining factor is the nature of the record, and not whether the record is located in a private or a government computer or communications device.

b. Consideration of public access in design of electronic recordkeeping system

When an agency is designing or acquiring an electronic recordkeeping system, the agency must consider whether the proposed 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. *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."

Similarly, 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 online or stored in an electronic recordkeeping system used by the agency. Section 119.01(2)(c), F.S. *And see* s. 287.042(3)(h), F.S. (Department of Management Services responsible for development of procedures to be used by state agencies when procuring information technology commodities and contractual services that ensure compliance with public records and records retention requirements). *Cf.* Rule 1B-26.003, F.A.C., adopted by the Department of State and providing standards for electronic recordkeeping.

Providing access to public records "is a duty of each agency." Section 119.01(1), F.S. Section 119.01(2)(a), F.S., states that "[a]utomation of public records must not erode the right of access to those records." A circuit judge found that an agency violated both policies when it established an automated anti-SPAM system that quarantined the requester's "entirely legitimate public records request" and allowed it to be deleted and purged a week later, because the agency "altogether failed to establish any procedural safeguards to ensure that legitimate public records requests were not inadvertently sent to SPAM." *Bracci v. School Board of Lee County*, No. 20-CA-5205 (Fla. 20th Cir. Ct. January 12, 2021), available online in the Cases database at the open government site at myfloridalegal.com.

c. E-Mail

E-mail messages made or received by agency officers and employees in connection with official business are public records and subject to disclosure in the absence of an exemption. AGOs 96-34 and 01-20. *See Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851, 855 (Fla. 1st DCA 2013), noting that "electronic communications, such as e-mail, are covered [by the Public Records Act] just like communications on paper." *Cf.* s. 668.6076, F.S., requiring agencies that operate a website and use electronic mail to post the following statement in a conspicuous location on the agency 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."

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. *Cf. Butler v. City of Hallandale Beach,* 68 So. 3d 278 (Fla. 4th DCA 2011) (affirming a trial court order finding that a list of recipients of a *personal* e-mail sent by mayor from her personal computer was not a public record).

Like other public records, e-mail 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. Thus, an e-mail communication of "factual background information" from one city council member 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. AGO 01-20.

d. Social media postings

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. 119.011(12), 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 in accordance with s. 257.36(6), F.S. *Id. And see* AGO 08-07 (city council members who post comments and emails relating to the transaction of city business on a privately owned and operated website "would be responsible for ensuring that the information is maintained in accordance with the Public Records Law").

The determination as to whether a list or record of accounts which have been blocked from posting to or accessing an elected official's personal Twitter feed is a public record involves mixed questions of law and fact which cannot be resolved by the Attorney General's Office. Inf. Op. to Shalley, June 1, 2016. However, "if the tweets the public official is sending are public records [because they were sent in connection with the transaction of official business] then a list of blocked accounts, prepared in connection with those public records 'tweets,' could well be determined by a court to be a public record." *Id. Cf. Knight First Amendment Institute v. Trump*, No. 18-1691 (2d Cir. July 9, 2019) (public official engaged in unconstitutional viewpoint discrimination by blocking certain users from access to his Twitter account, which is otherwise open to the public at large and "used for all manner of official duties," because he disagreed with their speech)

e. Text messages

A public official or employee's use of a private cell phone to conduct public business via text messaging "can create an electronic written public record subject to disclosure" if the text message is "prepared, owned, used, or retained . . . within the scope of his or her employment or agency." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040-1041 (Fla. 4th DCA 2018). *Accord City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022), noting that a "city commissioner's text messages may be a public record," although a private communication by a municipal official

"falls outside the definition of public record." For more information on personal records created or received by public officials on government or private devices, please see the discussion of that topic on page 133-135.

In order to comply with the requirements of the Public Records Act, "the governmental entity must proceed as it relates to text messaging no differently than it would when responding to a request for written documents and other public records in the entity's possession—such as emails—by reviewing each record, determining if some or all are exempted from production, and disclosing the unprotected records to the requester." *O'Boyle v. Town of Gulf Stream,* at 1041. *And see* the discussion on page 165 regarding the entity's responsibility to conduct a reasonable search to locate text messages that have been requested from the governmental entity, including those located on private accounts or devices.

The retention periods for text messages and other electronic messages or communications "are determined by the content, nature, and purpose of the records, and are set based on their legal, fiscal, administrative, and historical values, regardless of the format in which they reside or the method by which they are transmitted." *See* General Records Schedule GS1-SL for State and Local Government Agencies, Electronic Communications, available online at dos.myflorida.com/library-archives. Stated another way, it is the content, nature and purpose of the electronic communication that determines how long it is retained, not the technology that is used to send the message. *See also* Inf. Op. to Browning, March 17, 2010, advising that the same[retention] rules that apply to e-mail should apply to electronic communications including SMS communications (text messaging), MMS communications (multimedia content), and instant messaging conducted by government agencies.

f. Cybersecurity

Please see the discussion on that topic on page 158.

10. Emergency records

a. Emergency "911" records

Section 365.171(12)(a), 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. However, disclosure of the location of a coronary emergency to a private person or entity that owns an automated external defibrillator is authorized in some circumstances, as set forth in the exemption. Section 365.171(12)(b), 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. Section 365.171(12)(a), F.S. *See* AGO 93-60. There is no clear indication that the Legislature intended to include the sound of a person's voice as information protected from disclosure. AGO 15-01. Moreover, identifying information obtained or created independently of the 911 call, for example from a criminal investigation or offense report created as a result of such investigation, is not exempt under s. 365.171(12)(a), F.S. AGO 11-27.

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

Fernez, 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).

Moreover, an audio recording that records the killing of a law enforcement officer acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt and may not be listened to or copied except as authorized in the exemption. Section 119.071(2)(p), F.S. For more information on this exemption, please refer to the discussion on page 125.

Building plans, blueprints and related records which depict the structural elements of 911, E911 or public safety radio communication system infrastructure owned or operated by an agency, are exempt from disclosure. Section 119.071(3)(e)1.a., F.S. Geographical maps indicating actual or proposed locations, including towers, antennae, equipment, and facilities are also exempt. Section 119.071(3)(e)1.b., F.S.

b. Emergency evacuation plans and special needs registry

Section 119.071(3)(a), F.S., provides an exemption from disclosure for a security or firesafety system plan of a private or public entity that is held by an agency. The term "security or firesafety system plan" includes emergency evacuation plans and sheltering arrangements. *And see* s. 119.071(2)(d), F.S., providing an exemption from disclosure for "[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to Part I, chapter 23 [Florida Mutual Aid Act], 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, F.S.; 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.

Section 252.355(1), F.S., states that the Division of Emergency Management, in coordination with each local emergency management agency in the state, shall maintain a registry of persons with special needs (*i.e.*, persons who would need assistance during evacuations and sheltering because of physical, mental, cognitive impairment, or sensory disabilities), located within the jurisdiction of the local agency. Records relating to the registration of persons with special needs are confidential and exempt, except such information is available to other emergency response agencies, as determined by the local emergency management director. Section 252.355(4), F.S. Local law enforcement agencies shall be given complete shelter roster information upon request. *Id. Cf.* s. 402.88(4), F.S. (except as authorized in the exemption, all records and personal identifying information related to the enrollment of persons in a persons with disabilities registry held by a local law enforcement agency are confidential and exempt).

c. Emergency medical services records

Please refer to the discussion of this topic found on pages 96-97.

d. Emergency notification

Any information furnished by a person to any agency for the purpose of being provided with emergency notification by the agency is exempt from disclosure requirements. Section 119.071(5)(j)1., F.S. The e-mail addresses and corresponding home, school, and other "watched addresses of concern" provided for participation in the Florida Department of Law Enforcement Offender Alert System come within the scope of this exemption. AGO 11-16. *And see* s. 119.0712(2)(d)1. and 2., F.S. (emergency contact information contained in a motor vehicle record issued by the Department of Highway Safety and Motor Vehicles is confidential and exempt, and, without the express consent of the person to whom such emergency contact information applies, may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency or to a receiving facility, hospital, or licensed detoxification or addictions

receiving facility pursuant to cited statutes for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts).

e. Emergency planning information furnished to Division of Emergency Management

The Division of Emergency Management (Division) manages a statewide public awareness program which encourages individuals, families, and businesses to develop disaster plans in preparation for and in response to natural or manmade disasters. *See* s. 2, Ch. 14-188, Laws of Florida. Any information furnished by a person or a business to the Division for the purpose of being provided assistance with emergency planning is exempt. Section 252.905, F.S.

f. Emergency shelter and disaster recovery assistance

The address and telephone number of a person provided public emergency shelter during a storm or catastrophic event and held by the agency, as defined in s. 119.011, F.S., that provided the emergency shelter is exempt. Section 252.385(5), F.S.

Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster are confidential and exempt. Section 119.071(5)(f)1.b., F.S. The exemption authorizes access under specified conditions. Section 119.071(5)(f)2. and 3., F.S.

11. 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"). *Cf.* s. 11.51(4), F.S. (work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product are exempt from disclosure).

At the conclusion of the audit, the Auditor General provides the head of the agency being audited with a list of the findings so that the agency head may explain or rebut them before the report is finalized. Section 11.45(4)(d), F.S. The list of 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(2)(b), 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.*

Similarly, draft audit reports relating to city towing companies did not become subject to disclosure even though the towing companies, who had reviewed the reports pursuant to city policy, shared the reports with a news organization which subsequently published an article about them. The court said its decision was compelled by the plain language of the statute, concluding that because the draft audit reports were not final, they were not subject to disclosure. *City of Miami Beach v Miami New Times, LLC*, 314 So. 3d 562 (Fla. 3d DCA 2020). *And see Rushing v. Barfield,* No. 2011-CA-5864-NC (Fla. 12th Cir. Ct. August 4, 2011), *per curiam affirmed,* 83 So. 3d 718 (Fla. 2d DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (even though an audit has been completed with regard to some matters, clerk authorized to redact those portions of workpapers and notes relating to additional matters under investigation until the audit relating to the additional matters is concluded).

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. AGO 99-07. *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(2), F.S., establishes the Office of Inspector General in each state agency. Pursuant to s. 20.055(6), F.S., the inspector general is required 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(6)(b), F.S.

b. Bids, proposals and financial statements

Section 119.071(1)(b)2., F.S., provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" until such time as the agency provides notice of an intended decision or until 30 days after opening "the bids, proposals, or final replies," whichever is earlier. *Cf.* s. 255.0518, F.S., providing that notwithstanding s. 119.071(1)(b), F.S., agencies receiving sealed bids pursuant to a competitive solicitation for construction or repairs of a public building or public work, must open the bids at a public meeting conducted in compliance with the Sunshine Law, and must also announce bidder and price information at that meeting.

The term "competitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 119.071(1)(b)1., F.S.

If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)3., F.S. *And see* s. 286.0113(2)(c), F.S., providing an exemption for the recording of, and records presented at, an exempt meeting held pursuant to s. 286.0113(2)(b), F.S. For more information on this exemption, please refer to the discussion on page 35-36.

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(3), F.S., limiting access to materials used by municipal utilities to prepare bids; s. 339.55(10), F.S., providing an exemption for financial information of a private entity applicant which the Department of Transportation requires as part of the application process for loans or credit enhancements from the state-funded infrastructure bank; and s. 337.168, F.S., providing restrictions on disclosure of Department of Transportation cost estimates, and the bid analysis and monitoring system.

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 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) Business location or expansion plans

If a private entity requests in writing before an economic incentive agreement is signed that an economic development agency maintain the confidentiality of information concerning the entity's interest in or plans to locate or expand its business activities in Florida, the information 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)1., 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)(a)2., F.S. If a final project order for a signed economic development agreement is issued, then the information remains confidential for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such period of confidentiality may not extend beyond the period of confidentiality specified in s. 288.075(2)(a)1. or s. 288.075(2)(a)2., F.S. *And see* s. 288.075(2)(b), F.S., restricting public officials from entering into binding agreements with the private entity requesting confidentiality until 90 days after the information has been made public, unless certain conditions are met.

The term "economic development agency" means the state Department of Economic Opportunity, 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.

The Legislature's designation of those entities which are considered economic development agencies for purposes of s. 288.075, F.S., precludes any other entities from falling under the definition. *See* AGO 12-36 (St. Augustine-St. Johns County Airport Authority is not an "economic development agency" as defined in s. 288.075, F.S.). *Cf.* Inf. to Rooney, June 8, 2011 (if by amendment of the county charter, the voters made the county commission a part of the county economic development agency by placing the executive director of the agency under the direct supervision of the county commission, then the provisions of s. 288.075, F.S., would apply to the county commission).

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 disclosure without violating the required confidentiality provisions of the statute. *Id. 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).

Development plans, financial records, financial commitment letters and draft memoranda of understanding between the city and a developer considering expansion or relocation within the city appear to come within the scope of the exemption. 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.*

Trade secrets (as defined in the exemption) held by an economic development agency are confidential and exempt from disclosure. Section 288.075(3), F.S. 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, reemployment assistance 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, certain information held pursuant to the administration of an economic incentive program is confidential and exempt for limited periods as specified in the exemption. Section 288.075(6), F.S. *And see* s. 288.075(7), F.S. (tax returns, financial information, and credit history information held by a state or federally funded small business loan program).

(2) 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. And see* s. 125.0104(9)(d)1., F.S. (providing an exemption for 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).

e. Ownership records for registered public obligations

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

f. Personal financial records

In the absence of a statutory exemption, financial information prepared or received by an agency is 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). *See also* 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).

(1) Bank account, debit and credit card numbers

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), (2)(e) and 3(b), F.S., regarding confidentiality of bank account numbers and debit, charge, and credit card numbers contained in court and official records.

(2) Consumer financial information

There are statutes which exempt consumer financial information received by certain agencies. For example, s. 624.23, F.S., provides confidentiality for personal financial information 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. *See State, Department of Financial Services v. Danahy & Murray*, 246 So. 3d 466 (Fla. 1st DCA 2018), upholding the constitutionality of the statute. *See also* s. 717.117(8), F.S. (property identifiers contained in unclaimed property reports held by the Department of Financial Services are confidential); s. 627.351(6)(x)1., F.S. (claims and underwriting files of the Citizens Property Insurance Corporation, except as provided in the exemption); s. 119.071(5)(f), F.S. (health or property insurance information provided by applicants or participants in government housing assistance programs); and s. 655.057(1)(c), F.S. (personal financial information contained in investigation records of the Office of Financial Regulation).

(3) Financial information submitted by state licensure applicants

In the absence of statutory exemption, financial information in a licensing file is subject to disclosure. *See* AGO 04-16. However, the Legislature has enacted exemptions for financial information held by certain licensing agencies. For example, credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers and mortgage lenders are confidential. Section 494.00125(3) F.S. Financial information submitted by license applicants to the Department of Business and Professional Regulation is also confidential. Section 455.229(1), F.S. *And see* s. 456.014(1), F.S. (Department of Health license applicants). *Cf. Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court finding that identities of investors and partners listed in applications to dispense medical cannabis were not confidential trade secrets). For more information on disclosure issues relating to trade secrets, please refer to the discussion of that topic in pages 160-161.

(4) Temporary cash assistance program participant

Except as provided in the exemption, personal identifying information of a temporary cash assistance program participant is confidential. Section 414.295(1), F.S.

(5) Toll payment personal identifying information

Section 338.155(6), F.S. provides an exemption for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities.

(6) Utility payment records

Agency records of payments for utility services are subject to disclosure. *See* AGOs 88-57 (county records of payments made by individuals for waste collection services are public records), and 92-09 (customer delinquency information held by a utilities commission is subject to disclosure). *Cf.* s. 119.0713(5)(a), F.S., providing an exemption for customer meter-derived data and billing information in increments less than one billing cycle.

g. Taxpayer records

There are a number of statutes providing for confidentiality of taxpayer records held by the Department of Revenue. *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). *Cf. Wallace v. Guzman,* 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns submitted by housing finance authority members to state banking agency as part of the authority's application to organize a bank are subject to disclosure).

In addition, s. 193.074, F.S., provides for confidentiality of certain taxpayer information. 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,* No. 2006-CA-0896 (Fla. 2d Cir. Ct. April 25, 2006), available online in the Cases database at the open government site at myfloridalegal.com (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.).

A taxpayer's e-mail address held by a tax collector for purpose of sending certain tax notices or obtaining the consent of a taxpayer for electronic transmission of certain tax notices, as provided in cited statutes, is exempt from public disclosure requirements. Section 197.3225, F.S. *Cf.* s. 288.075(7), F.S. (tax returns held by an economic development agency pursuant to its administration of a state or federally funded small business loan program is exempt from public disclosure).

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.

12. Firearms records

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. The same information is also confidential when held by a tax collector appointed by the Department. Sections 790.0601(2), and 790.0625(4), F.S.

Information made confidential by s. 790.0601, F.S., 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(3), F.S. *Cf. Times Publishing Company v. City of Pensacola,* No. 2002-2053 (Fla. 1st Cir. Ct. November 13, 2002), *per curiam affirmed,* 869 So. 2d 546 (Fla. 1st DCA 2004), available online in the Cases database at the open government site at myfloridalegal.com, concluding that police department records of weapons assigned to law enforcement officers and described as "specialty weapons utilized for surveillance and defensive purposes, by surveillance personnel" were exempt from disclosure under s. 119.071(3)(a), F.S., relating to security system plans and terrorist threat assessments, and the exemption for surveillance personnel, techniques, and procedures, now found at s. 119.071(2)(d), F.S.

13. Hospital and medical records

a. Communicable or infectious disease reports

A number of exemptions exist for communicable or infectious disease reports. *See, e.g.,* s. 381.0031(6), 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). *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 Families, 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. Section 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.

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* ss. 381.004, and 384.287(6), 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(5)(b), F.S. *And see* s. 381.004(5)(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).

Results of HIV and hepatitis tests performed on persons charged with certain offenses may not be disclosed except as authorized in the exemption. 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 as provided in statute).

b. Hospital records

(1) Public hospitals

Like other governmental agency records, public hospital records are subject to disclosure in the absence of a statutory exemption. For example, the court in *Tribune Company v. Hardee Memorial Hospital,* No. CA 91-370 (Fla. 10th Cir. Ct. August 19, 1991), available online in the Cases database at the open government site at myfloridalegal.com, 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. *Cf. Bert Fish Foundation, Inc. v. Southeast Volusia Hospital District,* No. 10-20801-CINS (Fla. 7th Cir. Ct. December 22, 2010), available online in the Cases database at the open government site at myfloridalegal.com (governing boards of hospital district and medical center violated the Sunshine Law when they held numerous closed meetings to discuss an affiliation or merger with a healthcare corporation). For information on exemptions applicable to public hospitals, please refer to Appendix D and the Index. *Cf.* AGO 14-10, noting that an exemption in s. 395.3035(5), F.S., for certain records and meetings relating to a "strategic plan" for operation of a hospital must be narrowly construed and would not apply to an evaluation conducted pursuant to s. 155.40(5), F.S., for purposes of the sale or lease of a public hospital.

(2) 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).

Section 395.3036, F.S., however, provides that records of a private entity 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(18), 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). *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(21), F.S., describing and construing the term "complete sale" as applied to a purchase of a public hospital by a private entity.

c. Patient and clinical records

(1) Patient and clinical records generally

Patient records are generally protected from disclosure. For example, patient records in hospitals and surgical facilities 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. 119.0712(1), F.S. (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); and s. 400.022(1)(m), F.S. (nursing home residents' medical and personal records).

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"); and s. 397.501(7), F.S. (individuals receiving services from substance abuse service providers). *And see* ss. 397.6760(1), F.S. (petitions for involuntary assessment and stabilization and related court records filed with a court under Part V of Ch.

397, F.S.[substance abuse]); and 394.464(1) (petitions for voluntary and involuntary admission for mental health treatment, courts orders and related records filed with or by a court under the Baker Act). *Cf.* s. 381.987, F.S. (patient or caregiver identifying information in the medical marijuana use registry).

(2) Disclosure of patient records

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. *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(4), 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.

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(11), 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), available online in the Cases database at the open government site at myfloridalegal.com.

Similarly, clinical records maintain their confidentiality even when disclosed to another agency such as the clerk of the circuit court. AGO 91-10. *And see Sarasota Herald-Tribune v. Department of Children and Families,* No. 2001-CA-002445 (Fla. 2d Cir. Ct. April 8, 2002), available online in the Cases database at the open government site at myfloridalegal.com (confidentiality of clinical record is 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). *Cf.* AGO 01-69 (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).

d. 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).

e. Hospital employees

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.

f. Persons with disabilities registry

Section 402.88(1)(a), F.S., authorizes local law enforcement agencies to develop and maintain a database to be known as a "Persons with Disabilities Registry," listing persons who have developmental, psychological, or other disabilities or conditions that may be relevant to their interactions with law enforcement officers. All records and identifying information relating to the enrollment of persons in this registry held by a local law enforcement agency are confidential and exempt. Disclosure is authorized as provided in the exemption. Section 402.88(4), F.S.

14. Investigative records of non-law enforcement agencies

a. Investigative records generally

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. *See 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) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department is a public record). *See also Caswell v. Manhattan Fire and Marine Insurance Company,* 399 F.2d 417 (5th Cir. 1968) (ordering that certain investigative records of the state insurance agency 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); AGO 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); 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) (Sunshine Law applies to boards acting in a "quasi-judicial" capacity).

Disclosure of records of investigative proceedings upon completion of a preliminary investigation 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).

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 or her 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 investigative records. For a more complete listing, please refer to Appendix D and the Index.

(1) Discrimination investigations

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)1., F.S. *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). *Cf.* s. 119.071(2)(k), F.S., providing for confidentiality of complaints and investigative records of employee misconduct until the investigation is no longer active or has been concluded as set forth in the exemption.

Section 119.071(2)(g)1., F.S., was found to be inapplicable to a complaint filed against a county commissioner which listed many examples of alleged abusive behavior that would be inappropriate for one in the commissioner's position, because the complaint did not assert any form of discrimination based upon race, color, religion, sex, national origin, handicap or marital status. *Schweickert v. Citrus County Florida Board,* 193 So. 3d 1075, 1080 (Fla. 5th DCA 2016). The appellate court also rejected the county's argument that it could delay producing the complaint until after the investigation was completed because the investigator might have discovered or generated records during her investigation that could have related to discrimination based on race, color, religion, sex, national origin, handicap or marital status which would have qualified for the exemption.

Section 119.071(2)(g)2., F.S., provides that when the alleged victim chooses not to file a complaint and requests that the records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential. *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 the exemption.

Complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination based on 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), 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 any hearing or court proceeding. Section 119.0713(1), F.S.

Personal identifying information of the alleged victim in an allegation of sexual harassment or the victim of sexual harassment is confidential and exempt if such information identifies that person as an alleged victim or as a victim of sexual harassment. Confidentiality may be waived in writing by the alleged victim or the victim. The information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. Section 119.071(2)(n), F.S. *Cf.* s. 284.45(2), F.S.

(2) Employee misconduct investigations

For information about the exemption for complaints and active investigations of employee misconduct contained in s. 119.071(2)(k), F.S., please refer to the discussion on page 136.

(3) Ethics investigations

The complaint and records relating to the preliminary investigation conducted by the Commission on Ethics or other specified entities are confidential and exempt until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the records be made public, or until the Commission or other listed entity determines whether probable cause exists to believe that a violation has occurred. Section 112.324(2)(a) and (e), F.S. *See also* s. 112.3215(8)(b) and (e), F.S. (providing confidentiality for certain records relating to Ethics Commission investigation of alleged violations of lobbying laws).

However, 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 III, 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 ethics complaints. AGO 96-05. *And see Gay v. City of Madeira Beach*, No. 16-004836 (Fla. 6th Cir. Ct. May 26, 2017), available online in the Cases database at the open government site at myfloridalegal.com (city must permit inspection and copying of complaints filed with the Ethics Commission and received by the City Attorney). *Cf.* s. 112.324(2)(b), F.S. (written referrals to the Ethics Commission submitted pursuant to s. 112.324[1][b], F.S., records relating to such referrals held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission, are confidential and exempt except as provided in s. 112.324[2][e], F.S.)

(4) Local government inspector general investigations

The investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the investigation becomes final. Section 119.0713(2)(b), F.S. An investigation becomes final when the investigative report is presented to the unit of local government, as defined in the exemption. *Id. Cf. Nicolai v. Baldwin,* 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998), noting that a draft audit report prepared by the clerk of court did not become "final" when it was reviewed by the county administrator; the report became "final" and subject to disclosure when presented to the county commission. Information received, produced, or derived from an investigation is confidential and exempt until the investigation is complete or when the investigation is no longer active, as defined in the exemption. *Id.*

(5) 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(6)(b), F.S. 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), F.S. [whistle-blower], the name or identity of the individual shall not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation. *Id. And see* page 136, discussing the exemption for complaints alleging employee misconduct found in s. 119.071(2)(k), F.S.

Section 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.

(6) 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. *See Salameh v. Florida Department of Health*, 325 So. 3d 349 (Fla. 1st DCA 2021) (pursuant to s. 456.073[10], records of administrative complaint made public after probable cause panel found probable cause but failed to consider Dr. Salameh's exculpatory materials as required by statute, could not be maintained as confidential even though panel subsequently reconsidered the case, reviewed Salameh's submission, found no probable cause and withdrew the complaint).

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.*

(7) Whistle-blower investigations

(a) Whistle-blower identity

The Whistle-blower's Act, ss. 112.3187-112.31895, F.S., "is intended to prevent agencies, or independent contractors of agencies, from taking retaliatory action against an employee who reports violations of law on the part of a public employer or an independent contractor." AGO 12-20. It 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. Section 112.3188(1), F.S. *See also* s. 20.055(6)(b), F.S.

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 an "appropriate local official" or other statutorily designated officials; a general complaint of wrongdoing or a complaint 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 may constitute "appropriate local official" for purposes of processing complaints under the whistle-blower law). *Cf.* AGO 12-20 (while county transportation board may be designated as an "appropriate local official" under s. 112.3188, F.S., such designation "may not be advisable" because board must comply with the Sunshine Law and, "[a]bsent a statutory exemption, the handling of confidential information or records during the course of public meetings does not otherwise allow meetings of the board to be closed").

(b) Active investigations

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 s. 112.3188(2)(c), F.S. "Thus, the act protects the identity of employees and persons who disclose information that can serve as the basis for a whistle-blower complaint, as well as information received in the course of a whistle-blower investigation." AGO 10-48.

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. A complaint initiating an investigation into alleged mismanagement and overpayment of contractors constitutes "information received by" a proper local official and is not subject to disclosure until the investigation is no longer active. *McLendon v. Palm Beach County Office of Inspector General*, 286 So. 3d 375 (Fla. 4th DCA 2019). *See also* s. 119.071(2)(k), F.S., providing that complaints alleging "employee misconduct" are confidential until the investigation is no longer active or has concluded as provided in the exemption.

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. *And see* AGO 10-48 (confidential information received by the county's inspector general pursuant to the county's whistle-blower act may be shared with the county's ethics commission only for the purpose of carrying out the commission's whistle-blower functions).

15. Law enforcement records

a. Arrest and crime reports and the exemption for active criminal investigative and active criminal intelligence information

(1) Arrest and crime reports

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); and AGO 12-07, discussing requirements for recording telephone conversations set forth in Ch. 934, F.S., Florida's Security of Communications law, but noting that "any recordings of telephone conversations made by [a police department] in the usual course of business would be public records," subject to the access and confidentiality provisions of the Public Records Act. *Cf.* s. 901.43(1), F.S., prohibiting a person or entity engaged in publishing or disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other payment to remove the photographs.

However, statutory exemptions for active criminal investigative and intelligence information, confessions, juvenile offender records and certain victim information may apply to crime reports and other law enforcement records. A discussion of these and other exemptions pertaining to law enforcement records follows; for additional information regarding exemptions, please refer to Appendix D and the Index, *infra.*

(2) Purpose and scope of exemption

Section 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), available online in the Cases database at the open government site at myfloridalegal.com, holding that a newspaper was not entitled under Ch. 119, F.S., to inspect the complete and unredacted 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). *And see Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 973 (Fla. 4th DCA 2017), noting that the exemption furthers "the critical importance" of preserving the confidentiality of police records compiled during an ongoing investigation being conducted in good faith by criminal justice agencies.

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 asserting 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).

(3) Definition of 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). Similarly, an autopsy report may constitute criminal investigative information. *See* AGO 78-23.

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.

(4) Information that 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 pages 115-117 regarding confidentiality of certain juvenile crime records) or the name, sex, age and address of the victim of a crime, except as provided in s. 119.071(2)(h) or (o). F.S. Section 119.071(2)(h), F.S., provides confidentiality for information revealing the identity of a victim of a sexual offense, child abuse, or a child victim of human trafficking. Section 119.071(2)(o), F.S., provides that the address of a victim of an incident of mass violence is exempt. For more information, please refer to the discussion of exemptions pertaining to certain crime victims found on pages 123-125 (child abuse and sexual offense victims) and pages 125-126 (homicide victims). For information on the constitutional amendment known as Marsy's Law, please see the discussion on page 121;

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) or (m), F.S., 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. *See also Barfield v. City of Tallahassee,* 171 So. 3d 239 (Fla. 1st DCA 2015) (while "active criminal investigative information" is exempt from public disclosure requirements, the statute expressly excludes the time, date, location, and nature of a reported crime from the exemption).

(5) Records released to the defendant

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, e.g., 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). *Accord 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) and *Times Publishing Company v. State*, 903 So. 2d 322, 325 (Fla. 2d DCA 2005). *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), available online in the Cases database at the open government site at myfloridalegal.com (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 extrajudicial 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 identifying information of a victim of a sexual offense, child abuse, or certain human trafficking crimes pursuant to s. 119.071(2)(h), F.S.; or identifying information of a witness to a homicide for a specified period as provided in s. 119.071(2)(m), F.S.; or the address of a victim of an incident of mass violence as provided in s. 119.071(2)(o), 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*); *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). *Cf. Rameses, Inc. v. Demings,* 29 So. 3d 418, 423 (Fla. 5th DCA 2010) ("disclosure to criminal defendant during discovery of unredacted versions of undercover police surveillance recordings does not destroy, in a public records context, the exemptions contained in section 119.071 for information relating to the identity of undercover law enforcement personnel"). *See also* the discussion of Marsy's Law on page 121.

(6) Active versus inactive criminal investigative or intelligence information

(a) 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). Thus, "once the investigations are concluded, if no charges are filed, the records would cease to be 'active' and thus subject to disclosure." *Id.* at 1018.

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. 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. *Barfield v. City of Fort Lauderdale Police Department* at 1016-1017.

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 undercover 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), available online in the Cases database at the open government site at myfloridalegal.com.

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*, No. 95-06324 CACE (13) (Fla. 17th Cir. Ct. May 21, 1996), available online in the Cases database at the open government site at myfloridalegal.com in which the judge ordered 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.

(b) 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. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992), available online in the Cases database at the open government site at myfloridalegal.com (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.*

(c) 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." *See State v. Kokal,* 562 So. 2d 324, 326 (Fla. 1990) and *Osario v. State,* 34 So. 3d 98 (Fla. 3rd DCA 2010). *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. *See also 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).

Moreover, 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), r*eview 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).

(7) Criminal defendant's public records request

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).

(8) Disclosure of active criminal investigative information to the 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). *Cf. State v. Buenoano,* 707 So. 2d 714, 717 (Fla. 1998) (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).

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), available online in the Cases database at the open government site at myfloridalegal.com (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").

(9) Disclosure of active criminal investigative information to another criminal justice agency

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.

Moreover, 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 *State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205 (Fla. 4th DCA 2018) (surveillance video footage created by a school district before a criminal investigation began did not constitute "criminal investigative information" within the meaning of s. 119.011[3]b] because it was not compiled by a criminal justice agency in the course of conducting a criminal investigation). *And see New Times, Inc. v. Ross,* No. 92-5795 CIV 25 (Fla. 11th Cir. Ct. March 17, 1992), available online in the Cases database at the open government site at myfloridalegal.com (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 or her 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 AGO 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 the records have been subpoenaed by and transferred to the state attorney's office. 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 119.071(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.

(10) Records containing both active criminal investigative information and non-exempt 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 redact only that portion of the record for which an exemption is asserted and to provide the remainder of the record for inspection and copying. *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."

(11) Criminal investigative or intelligence information received from other states or the federal government

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.*

(12) Criminal investigative or intelligence information received prior to January 25, 1979

Criminal intelligence or investigative information obtained by a criminal justice agency prior to January 25, 1979, is exempt from disclosure. Section 119.071(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.").

b. "Baker Act" reports prepared by law enforcement officers

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. Thus, the report prepared by the officer pursuant to this statute is part of the patient's clinical record and is confidential. *Cf. Lake v. State,* 193 So. 3d 932 (Fla. 4th DCA 2016) (Legislature has not made records of a sexually violent predator confidential in the same way as the clinical records of a Baker Act patient).

However, in AGO 93-51, the Attorney General's Office advised that a *separate* 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. *Cf.* s. 394.464(1), F.S., providing confidentiality for petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act and authorizing disclosure to specified persons and entities.

c. Body camera recordings

A body camera recording is confidential and exempt from public disclosure when taken inside a private residence, inside a health care, mental health care, or social services facility, or in a place that a reasonable person would expect to be private. Section 119.071(2)(l)2., F.S. The term "body camera" is defined to mean a "portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities." Section 119.071(2)(l)1.a., F.S.

A law enforcement agency may disclose the recording in furtherance of its official duties and responsibilities or to another governmental agency in furtherance of that agency's duties and responsibilities. Section 119.071(2)(l)3., F.S.

The recording must be disclosed to certain individuals as set forth in the statute, including the person recorded, or pursuant to court order. Section 119.071(2)(l)4., F.S. *And see* s. 943.1718(2)(d), F.S. However, the exemption does not supersede any other public records exemption that existed before or is created after the effective date of the exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt. Section 119.071(2)(l)7., F.S.

A law enforcement agency must retain a body camera recording for at least 90 days. Section 119.071(2)(l)5., F.S. The exemption applies retroactively. Section 119.071(2)(l)6., F.S.

d. 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. *And see Times Publishing Company v. State,* 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002), (portions of police 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.).

e. 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), available online in the Cases database at the open government site at myfloridalegal.com (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. *And see Holley v. Bradford County Sheriff's Department,* 171 So. 3d 805 (Fla. 1st DCA 2015) (trial court must conduct an in camera inspection of the records to determine whether they could be redacted to remove information identifying confidential informants). *Cf. Althouse v. Palm Beach County Sheriff's Office,* 92 So. 3d 899 (Fla. 4th DCA 2012), *disapproved on other grounds*, *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120 (Fla. 2016) (agency conceded that its initial response denying public records request for "rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants" was "incorrect"; records were subsequently produced after portions were redacted pursuant to s. 119.071[2][d], F.S.).

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.*

Section 943.082(1), F.S., authorizes the Florida Department of Law Enforcement, in collaboration with the Department of Legal Affairs, to competitively procure a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials. The identity of the reporting party received through the reporting tool and held by the Department of Law Enforcement, Department of Education, law enforcement agencies, or school officials is confidential. Section 943.082(6), F.S.

f. Conviction integrity unit reinvestigation information

Section 119.071(2)(q), F.S., establishes an exemption for conviction integrity unit reinvestigation information, as defined in the exemption, for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation.

g. Criminal history information

(1) Criminal history information generally

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, 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 justice 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)(a), 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. *And see* pages 116-117 relating to dissemination of criminal history information relating to juveniles.

(2) 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). *And see* s. 943.0595, F.S., providing for automatic sealing of certain criminal history records.

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. AGO 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). *Cf.* s. 943.0582(5), F.S. (nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential).

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(6), F.S. Similar provisions exist relative to disclosure of sealed criminal history records. Section 943.059(6), F.S. *And see* s. 943.0583(10)(a) and (12), F.S. (petition for expunction and expunged criminal history record of human trafficking victim). 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.

h. Fingerprint and genetic genealogy records

Biometric identification information is exempt from s. 119.07(1), F.S. Section 119.071(5)(g), F.S. The term "biometric identification information" means any record of friction ridge detail, fingerprints, palm prints, and footprints. *Id.*

Except as provided in the exemption, investigative genetic genealogy information and materials as defined in the exemption are confidential and exempt from disclosure requirements. Section 119.071(2)(r), F.S. *And see* s. 943.325(14), F.S., providing that the results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045, F.S., at the request of the agency. Otherwise, such information is confidential and exempt.

i. Forensic behavioral health evaluations

A forensic behavioral health evaluation filed with the court pursuant to Ch. 916, F.S. (mentally deficient and mentally ill defendants) is confidential and exempt. Section 916.1065(1), F.S.

j. Geolocation information

Law enforcement geolocation information of a law enforcement officer or a law enforcement vehicle that is held by a law enforcement agency is exempt from disclosure requirements. The exemption does not apply to traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information. Disclosure is required under specified circumstances. Section 119.071(4)(e), F.S.

k. Juvenile offender records

(1) Confidentiality and authorized disclosure

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)(a), 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 Florida Commission on Offender Review, 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 exempt [from public disclosure]*. This exemption applies to information obtained before, on, or after the effective date of this exemption. (e.s).

Section 985.04(1)(b), F.S., states that the confidential and exempt information may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, 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 court order. *Cf.* AGO 96-65 (subject of juvenile offense records may authorize access to such records to others [such as a potential employer] by means of a release).

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." 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), available online in the Cases database at the open government site at myfloridalegal.com.

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 (confidentiality provisions preclude public release of the names and addresses of the parents of juvenile arrested for a misdemeanor). *And see* s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records. *Cf.* AGO 97-28 (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).

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), available online in the Cases database at the open government site at myfloridalegal.com (denying petitioner's request to inspect gang intelligence files compiled by the sheriff's office).

(2) Exceptions to confidentiality

(a) 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.

(b) 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., was amended again in 2016 and 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 by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

(b) Charged with a violation of law which, if committed by an adult, would be a felony;

(c) Found to have committed an offense which, if committed by an adult, would be a felony; or

(d) Transferred to adult court pursuant to part X of Chapter 985, are not considered confidential and exempt from s. 119.07(1) solely because of the child's age.

The Attorney General's Office has stated that the expanded disclosure provisions originally enacted in 1994 apply only to juvenile records created after October 1, 1994, the effective date of the 1994 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. See G.G. v. Florida Department of Law Enforcement,* 97 So. 3d 268, 274 (Fla. 1st DCA 2012) ("it is clear that only the arrest records of those juveniles who the legislature has designated in section 985.04[2] have lost their confidential status and are available to the public . . . ."). *See also* the discussion below regarding the dissemination of criminal history information relating to juveniles. *Cf.* s. 943.0582(5), F.S. (nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential).

A public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of a child which are not confidential and exempt under this section or otherwise restricted from publication by law; however, this paragraph does not restrict public access to records as provided by s. 119.07, F.S. Section 985.04(2)(b), F.S.

(c) 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. *And see* s. 1006.08(2), F.S. (notification by court to school superintendent); and s. 985.04(4)(c), F.S. (notification by school superintendent

to certain school personnel). *Cf.* s. 985.04(4)(d), F.S. (notification by Department of Juvenile Justice of the presence of a juvenile sex offender in the care and custody or under the jurisdiction or supervision of the department).

(d) Criminal history information relating to juveniles

Section 943.053(3)(c)1., F.S., provides that criminal history information relating to juveniles, including information that is confidential pursuant to s. 943.053(3)(b), F.S., shall be available to:

(a) A criminal justice agency for criminal justice purposes on a priority basis and free of charge;

(b) The person to whom the record relates, or his or her attorney;

(c) The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or

(d) An agency or entity specified in s. 943.0585(6) or s. 943.059(6), F.S., for the purpose specified therein, and any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

(e) 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. 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* s. 960.001(8), F.S., authorizing similar disclosures to victims.

In addition, s. 985.04(3), F.S., states that a "law enforcement agency may release a copy of the juvenile offense report to the victim of the offense." *Cf. Harvard v. Village of Palm Springs,* 98 So. 3d 645 (Fla. 4th DCA 2012), noting that the authorization in s. 985.04(3), F.S., is permissive not mandatory; thus, a local government was not *required* to produce a juvenile offense report to the victim's mother.

l. Motor vehicle records

(1) Automated license plate recognition system records

Images and data containing or providing personal identifying information obtained through use of an automated license plate recognition system are confidential and exempt. Section 316.0777, F.S.

(2) Crash reports

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, as defined in s. 119.011, F.S., are confidential and exempt for a period of 60 days after the report is filed. Section 316.066(2)(a), F.S.

Crash reports held by an agency may be made immediately available to the parties involved in the crash, their legal representatives, insurers, law enforcement agencies and their contract service providers, victim services programs, and any federal, state, or local governmental agency or any private person or entity acting on behalf of these agencies, but not for redistribution to any person or entity not listed in this subsection. Section 366.066(2)(b), F.S. *Cf.* AGO 01-59 (owner of vehicle involved in a crash authorized to receive access to crash report).

Section 316.066(2)(b), F.S., also provides that crash reports which do *not* contain the home or employment street addresses, driver license or identification card numbers, dates of birth and home and employment telephone numbers of the parties involved in the crash shall be made immediately available to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S. Section 316.066(2)(b), F.S

"As a condition precedent to accessing a crash report, 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." Section 316.066(2)(d), F.S.

The written statement must be completed and sworn to by the requesting party for each individual crash report. *Id.* 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 knowing unauthorized disclosure or use of confidential information in violation of this statute. *See* s. 316.066(3)(b), (c), and (d), F.S., for more information. *See also* s. 316.066(3)(e), F.S., providing a civil remedy.

Crash reports may be made available 60 days after the report is filed to any person or entity authorized in 316.066(2)(b) or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Section 316.066(2)(f), F.S.

If crash reports are created by or submitted to an agency electronically as data elements within a computerized database or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential. Sixty days after the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information to entities eligible to access the crash report under s. 316.066(2)(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Such data shall be provided pursuant to a memorandum of understanding. Section 316.066(2)(g), F.S.

(3) Traffic citations

"Driver information" contained in a uniform traffic citation held by an agency is exempt from disclosure requirements. Section 316.650(11)(b)1., F.S. The term "driver information" is defined to mean "a driver's date of birth, driver license or identification card number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number." Section 316.650(11)(a), F.S. The term does not include the driver's name. *Id.* Driver information may be released in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b), F.S., and in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and disclosure requirements in 18 U.S.C. s. 2721(c). Section 316.650(11)(b)2., F.S.

(4) Department of Highway Safety and Motor Vehicles motor vehicle 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* (DPPA). Such information may be released only as authorized by that act. 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. *Cf.* AGO 10-10 (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 a law enforcement agency or its agent, the confidentiality requirements of s. 119.0712(2)(b), F.S., do not reach those records created by subsequent users).

E-mail addresses collected by DHSMV pursuant to cited statutes [motor vehicle record and driver license transactions] are exempt from public disclosure requirements. Section 119.0712(2)(c), F.S. *And see* s. 119.0712(2)(d)1. and 2., F.S., providing that emergency contact information contained in a motor vehicle record is confidential, and may be released only as provided in the exemption.

Secure login credentials held by DHSMV are exempt, as are Internet protocol addresses, geolocation data, and other information from which a user accesses a public-facing portal. Section 119.0712(2)(f), F.S.

m. 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.

n. 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, the s. 119.071(1)(a), F.S., exemption for questions and answers used in employment examinations applies to questions and answers contained in pre-employment polygraph examinations. *Rush v. High Springs,* 82 So. 3d 1108 (Fla. 1st DCA 2012). This exemption applies to examination questions and answers but does not include the "impressions and grading of the responses" by the examiners. *See Dickerson v. Hayes,* 543 So. 2d 836, 837 (Fla. 1st DCA 1989).

o. 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). *And see Cruz v. State,* 279 So. 3d 154 (Fla. 4th DCA 2019), finding that county jail visitation logs are public records, and rejecting the defendant's argument that the names of jail visitors should be protected from 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).

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 (including HIV tests) or substance abuse records of inmates or offenders; preplea, pretrial intervention, presentence or postsentence investigative records;

information regarding a person in the federal witness protection program; confidential or exempt Florida Commission on Offender Review records; information which if released would jeopardize someone's safety; information concerning a victim's statement and identity; information which identifies an executioner or that identifies or could lead to the identification of any person or entity that participates in an execution; and records that are otherwise confidential or exempt by law. *See Correll v. State*, 184 So. 3d 478 (Fla. 2015), in which the Court summarized prior precedent upholding the constitutionality of s. 945.10, F.S., and again rejected claims that an inmate has the right to know the identity of execution team members.

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), available in the Cases database at the open government site at myfloridalegal.com. *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).

p. 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 . . . ." *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 or firesafety system plan" that is confidential and exempt from public disclosure.

q. 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). *See also Althouse v. Palm Beach County Sheriff's Office,* 92 So. 3d 899 (Fla. 4th DCA 2012), *disapproved on other grounds, Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120 (Fla. 2016) noting that the agency had conceded that its initial response denying Althouse's request for "rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants" was "incorrect" and that the agency had subsequently produced the records after redacting portions pursuant to s. 119.071(2)(d), F.S. *Cf. State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018), in which the court noted that surveillance techniques are "*exempt*, not confidential and exempt." [Emphasis supplied by the Court]

The detailed schedule and travel plans of the Governor, including drive times and the time and location of the Governor's arrival and departure, were encompassed within the s. 119.071(2)(d), F.S., exemption where the Florida Department of Law Enforcement special agent submitted an undisputed affidavit attesting that premature disclosure of this information would reveal "surveillance techniques, procedures, or personnel," and would jeopardize the security of the Governor and the officers assigned to protect him. *Executive Office of the Governor v. AHF MCO*

of Florida, Inc., 257 So. 3d 612 (Fla. 1st DCA 2018). *See now* s. 943.68(10)(a), F.S. (2023) (records held by a law enforcement agency relating to security or transportation services provided by the Department of Law Enforcement under s. 943.68(1)(5) or (6), F.S., are exempt from disclosure requirements).

r. 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).

Information regarding law enforcement officers who are assigned to undercover duty and whose names appear on personnel rosters or other lists of all law enforcement officers of the city without regard to whether the record reveals the nature of their duties may constitute "[a]ny information revealing undercover personnel of any criminal justice agency[.]" AGO 15-02. The Legislature's determination that such information is exempt from public inspection, rather than confidential, conditions the release of exempt information upon a determination by the custodian that there is a statutory or substantial policy need for disclosure. *Id.*

For information on the identity of safe-school officers appointed pursuant to ss. 1006.12 or 1002.42(18)(c), F.S., please refer to the discussion on page 159.

s. Victim information

(1) Marsy's Law

On November 6, 2018, Florida voters approved a constitutional amendment known as "Marsy's Law." Marsy's Law amends Article. I, s. 16 of the Florida Constitution to add several provisions relating to victim rights. The amendment became effective on January 8, 2019.

Marsy's Law provides that "every victim is entitled to the following rights, beginning at the time of his or her victimization" to include: "The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family or which could disclose confidential or privileged information of the victim." Art. I, s 16(b)(5), Fla. Const. However, this constitutional provision "does not guarantee to a victim the categorical right to withhold his or her name from disclosure." *City of Tallahassee v. Florida Police Benevolent Association, Inc.* 48 F.L.W. S237 (Fla. November 30, 2023). In *City of Tallahasee,* the Florida Supreme Court also recognized the authority of the Legislature in Art. I, s. 24(c), Fla. Const. to enact exemptions from the Public Records Act that apply to certain victim information.

(2) Statutory exemptions relating to 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) or (o)," are specifically excluded from the definition of criminal investigative or intelligence information. *See* s. 119.011(3)(c)2., F.S. defining the terms "criminal investigative information" and "criminal intelligence information." In addition to the victim exemptions identified above, there are other exemptions that may apply as follows:

(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, 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 119.10(2)(b), F.S.

(c) Documents which are *received* by an agency regarding victims

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.*

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 exemption 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, such as a copy of the incident or offense report for one of the listed crimes, that an applicable crime has occurred. *See* AGO 96-82. 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). *And see* the discussion of Marsy's Law on page 121.

The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for exemption AGO 96-82. It applies to any records held by an agency and is not limited to those records relating to the offense. *Id.* "[A]n examination of the legislative history surrounding the adoption of this exemption indicates that the Legislature intended that the exemption not be limited to those documents identifying the individual as a victim of crime but rather be applied to any document revealing the personal information held by any agency." *Id. And see* AGO 02-50, in which the Attorney General's Office advised that s. 119.071(2)(j)1., F.S., does not contain an exception for copies of the police report that are sent to domestic violence centers pursuant to s. 741.29, F.S., if the victim has made a written request for exempt status of the personal information specified in s. 119.071(2)(j)1., F.S.

In addition, the requirement that the victim make a written request for exemption applies only to information not otherwise held confidential by law; thus, the exemption supplements, but does not replace, other confidentiality provisions, such as s. 119.071(2)(h), F.S., that may be applicable to certain crime victims. AGO 96-82

For more information on exemptions pertaining to domestic violence or stalking victims, please see the discussion on pages 78-79.

(e) Information identifying or depicting victims of sex offenses and of child abuse

(1) Law enforcement and prosecution records

Section 119.071(2)(h)1.a., F.S., provides confidentiality for criminal investigative and intelligence information that reveals the identity of a victim of the crime of child abuse, as defined by Ch. 827, F.S., or that reveals the identity of a person under the age of 18 who is a victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S. Information which may reveal the identity of a victim of a sexual offense, including a sexual offense prohibited in s. 787.06(3)(b), (d), (f), or (g), or Chs. 794, 796, 800, 827, or 847, F.S., is also confidential. Section 119.071(2)(h)1.b., F.S.

In addition, the photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under ss. 787.06(3)(b), (d), (f), or (g) or 810.145, or 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. *See Harvard v. Village of Palm Springs,* 98 So. 3d 645, 647 (Fla. 4th DCA 2012), rejecting a mother's assertion that there is "no law prohibiting her" from obtaining a copy of her son's videotaped interview, because s. 119.071(2)(h)1.a-c, F.S., "provides that a video of a victim is exempt from a public records request if it is taken during the course of one of several enumerated types of criminal investigations."

Thus, the Attorney General's Office advised that 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.

Section 119.071(2)(h)2.a-c, F.S., sets forth circumstances which permit a law enforcement agency to disclose the confidential information. Moreover, the Attorney General's Office has advised that the confidentiality provisions in that exemption do not apply to the identity of a child abuse victim who *died* from suspected abuse. AGO 90-103. *Cf.* s. 406.135, F.S. (autopsy

report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt, except as provided in the exemption) and s. 119.071(2)(p), F.S. (photographs and video and audio recordings of the killing of a minor are confidential and exempt, except as provided in the exemption).

Section 119.071(2)(j)2a., 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.* A public employee may not willfully and knowingly disclose videotaped information that reveals the minor's identity to anyone other than the designated individuals, including the defendant. Section 119.071(2)(j)2b., F.S. *Cf. State v. Ingram,* 170 So. 3d 727 (Fla. 2015) (J. Pariente concurring) (s. 119.071[2][j]2.b. does not authorize disclosure to a convicted incarcerated inmate of videotaped information that reveals the minor victim's identity).

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 (abuse, aggravated abuse, and neglect of a child); 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

Section 92.56, F.S., provides that criminal intelligence information or criminal investigative information made confidential pursuant to s. 119.071(2)(h), F.S., 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 an alleged offense, the status of the information must be maintained by the court if the state or the victim demonstrates 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. *See also* AGO 03-56 and s. 119.0714(1)(h), F.S.

(3) Department of Children and Families abuse records

As discussed on pages 75-77, 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., ss.* 415.107 and 39.202, F.S., apply to records of the Department of Children and Families [DCF] 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 DCF and provides that the exemption from disclosure for DCF abuse records also applies to DCF records and information in the possession of the agencies granted access. *See* Inf. Op. to Russell, October 24, 2001.

(f) Homicide victims and witnesses

(1) Photographs and video or audio recordings of killing of law enforcement officer, killing of a minor, or killing of victim of mass violence

Section 119.071(2)(p)2., F.S., provides confidentiality for a photograph, video or audio recording that depicts or records the killing of a law enforcement officer acting in accordance with his or her official duties, the killing of a minor, or the killing of a victim of mass violence. Disclosure may be made to certain persons and entities as authorized in the exemption. Section 119.071(2)(p)2., F.S. *And see* page 74, discussing the confidentiality of autopsy photographs.

The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean "all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." Section 119.071(2)(p)1.a., F.S.

"Killing of a minor" means all acts or events that cause or otherwise relate to the death of a victim who has not yet reached the age of 18 at the time of the death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death, events that depict a victim under the age of 18 being killed, or events that depict the body of a victim under the age of 18 who has been killed. Section 119.071(2)(p)1.b., F.S.

"Killing of a victim of mass violence" means events that depict either a victim being killed or the body of a victim killed in an incident in which 3 or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence. Section 119.071(2)(p)1.c., F.S.

Section 119.071(2)(p)7., F.S., provides that the exemption shall be given retroactive application and shall apply to all photographs and recordings of persons covered by the exemption regardless of whether the killing occurred before, on, or after the effective date of the act, May 23, 2019. *And see State v. Schenecker*, No. 11 CF 001376A (Fla. 13th Cir. Ct. August 3, 2011), *cert.denied sub nom., Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), in which the court concluded that a prior version of this statute applied to crime scene photographs of the victims.

(2) Address of victim of an incident of mass violence

The address of a victim of an incident of mass violence is exempt from disclosure requirements. Section 119.071(2)(o), F.S. The term "incident of mass violence" means an incident in which 4 or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The term "victim" means a person killed or injured during an incident of mass violence, not including the perpetrator. *Id. And see* the discussion about Marsy's Law on page 121.

(3) Autopsy report of death of minor due to domestic violence

An autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt. Section 406.135(2)(b), F.S.

(4) Homicide witness

Criminal investigative or intelligence information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S., is confidential for 2 years after the date on which the murder is observed by the witness. Section 119.071(2)(m), F.S. A criminal justice agency may disclose this information in the furtherance of its official duties and responsibilities; to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered; to another governmental agency for use in the performance of its official duties and responsibilities; to the parties in a pending criminal prosecution as required by law. *Id. And see Palm Beach County Sheriff's Office v. Sun-Sentinel Company, LLC*, 226 So. 3d 969 (Fla. 4th DCA 2017) (applying exemption to shield the identity of witnesses who observed a homicide on the highway and whose vehicle was hit by bullets fired by the perpetrator as the witnesses attempted to follow the suspect's car).

(g) Human trafficking victims

Criminal intelligence information or criminal investigative information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged pursuant to s. 943.0583, F.S., is confidential. Section 943.0583(11)(a), F.S. Disclosure is authorized under certain circumstances. Section 943.0583(11)(b), F.S. *And see* s. 119.071(2)(h), F.S., relating to victims of the crime of human trafficking proscribed in s. 787.06, F.S., discussed on page 123.

Information about the location of a safe house, safe foster home, or other residential facility serving child victims of commercial sexual exploitation, as defined in s. 409.016, F.S., is confidential and exempt from public disclosure requirements. Section 409.1678(6)(a), F.S. Information may be provided to an agency as necessary to maintain health and safety standards and to address emergency situations in the house or facility. Section 409.1678(6)(b), F.S.

(h) 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 (or their immediate family) who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. Section 914.27, F.S.

16. 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). *Cf City of St. Petersburg v. Dorchester Holdings, LLC.*, 331 So. 3d 799 (Fla. 2d DCA 2021), discussing the application of R. Regulating Fla. Bar 4-42 and Fla. Bar Ethics Opinion 09-1.

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), available online in the Cases database at the open government site at myfloridalegal.com (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 . . . ." *See also 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). *Cf. Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 682 (Fla. 1st DCA 2018), noting that "it was important" that an agency attorney's memorandum which was prepared exclusively to assess the strength of the agency's evidence in a licensing case remain exempt from disclosure during the pendency of the adversarial administrative proceedings.

Section 119.071(1)(d)1., F.S., states, in relevant part:

> 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.

Note that this statutory exemption applies to attorney work product that has reached the status of becoming a public record; as discussed more extensively on pages 132-133, 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. However, the agency is not required to identify each *document* in a record that it asserts to be exempt under the work product exemption. *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018). Whether to impose such a requirement "is a matter properly addressed to the legislature rather than this court." *Id*.

In the event of litigation disputing the claimed work product exemption, the court must conduct an in camera inspection of the records. *Environmental Turf, Inc. v. University of Florida Board of Trustees,* 83 So. 3d 1012 (Fla. 1st DCA 2012).

If a court finds that the record was improperly withheld, the party seeking the record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court. Section 119.071(1)(d)2., F.S. As one court has noted, the inclusion of an attorney's fee 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), available online in the Cases database at the open government site at myfloridalegal.com ("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,* 640 So. 2d at 218. *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) Records prepared prior to litigation or for other purposes

Unlike the open meetings exemption in s. 286.011(8), F.S., for certain attorney-client discussions between a governmental board and its attorney, s. 119.071(1)(d), F.S., is not limited to records created for *pending* litigation before a court or administrative agency, but may also apply 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(8), F.S.

However, s. 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 litigation or adversarial administrative proceedings, or prepared in anticipation of imminent 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 do not constitute exempt attorney work product because memoranda do not relate to any pending litigation nor appear to have been prepared exclusively for litigation); *MHM Correctional Services, Inc. v. State, Department of Corrections,* No. 2009 CA 2105 (Fla. 2d Cir. Ct. June 10, 2009), available online in the Cases database at the open government site at myfloridalegal.com (department wrongfully withheld portions of an e-mail stream regarding the bid process as protected work product or privileged communications as none of the emails 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. *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 to records that conveyed specific factual information rather than mental impressions or litigation strategies). *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).

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), available online in the Cases database at the open government site at myfloridalegal.com. 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. City of Avon Park v. State,* 117 So. 3d 470 (Fla. 2d DCA 2013) (recognizing that where no charges were filed against any of the parties mentioned in a state attorney investigator's report, the report was a public record and the s. 119.071[1][d], F.S., exemption was inapplicable).

(c) Settlement records

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), available online in the Cases database at the open government site at myfloridalegal.com (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). *See also* Inf. Op. to Gastesi, August, 27, 2015 (settlement demand furnished by plaintiff to agency); and *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). *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).

(2) Duration of exemption

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); and *Lightbourne v. McCollum, supra* (rejecting a "continuing exemption" claim by the state). *And see* AGO 13-13 (Sunshine Law exemption for certain attorney-client meetings found in s. 286.011[8], F.S., "does not recognize a continuation of the exemption for 'derivative claims' made in separate, subsequent litigation"). *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).

Thus, a school board failed to meet its burden of showing that items contained in a school board litigation report were exempt from disclosure where there was no evidence that the cases in question were pending and open when the board received the public records request. *Barfield v. School Board of Manatee County,* 135 So. 3d 560 (Fla. 2d DCA 2014).

However, the phrase "conclusion of the litigation or adversarial administrative proceedings" encompasses post-judgment collection efforts such as a legislative claims bill. *Wagner v. Orange County,* 960 So. 2d 785 (Fla. 5th DCA 2007). *And see* AGO 94-33, concluding that for purposes of the attorney-client exemption from the Sunshine Law in s. 286.011(8), F.S., a pending lawsuit is concluded when the suit is dismissed with prejudice or the applicable statute of limitations has run; "[t]o allow a plaintiff who has voluntarily dismissed a suit to gain access to transcripts of strategy or settlement meetings in order to obtain an advantage in the refiling of a lawsuit would subvert the purpose of the statute." *Cf. Chmielewski v. City of St. Pete Beach,* 161 So. 3d 521 (Fla. 2d DCA 2014) (rejecting city's argument that because an agreement settling a quiet title action provided for further mediation should a dispute arise regarding the meaning of the agreement, the case was still pending for purposes of the Sunshine Law exemption in s. 286.011[8], F.S).

In addition, the exemption extends "through prosecution of appeals." Inf. Op. to Boutsis, December 13, 2012. *Cf.* s. 119.071(1)(d)1., F.S. ("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.").

c. Other statutory exemptions relating to litigation records

Section 768.28(16)(b), F.S., provides an exemption for claims 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.

The "plain language of the statute" indicates that the "*entire* claims file is exempt from disclosure until resolution of the claim or claims." *City of Homestead v. McDonough*, 232 So. 3d 1069, 1071 (Fla. 3d DCA 2017). [emphasis supplied by the court]. Accordingly, the trial court erred by ordering production of certain records in the file on the theory that production would not harm the city. *Id. See also 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. AGOs 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), available online in the Cases database at the open government site at myfloridalegal.com (exemption now found at s. 768.28[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), available online in the Cases database at the open government site at myfloridalegal.com. *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. (claims files of self-insurance program adopted by Board of Governors, or the board's designee, 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 Braddy v. State*, 219 So. 3d 803. 821 (Fla. 2017) ("handwritten attorney notes, draft documents, and annotated copies of decisional law . . . do not constitute 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 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 (handwritten notes prepared by city's assistant labor attorney during her interviews with city employees are public records "when those notes are made to perpetuate and formalize knowledge and to communicate that information to the city's labor attorney").

17. Personal records not made or received in the course of official business

As noted in AGO 04-33, the broad definition of "public record" makes it clear that 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." *See* s. 119.011(12), F.S., defining the term "public records" to mean materials "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." *See also Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), stating that in order to constitute "public records" for purposes of Ch. 119 disclosure requirements, the records must have been prepared "in connection with official agency business" and be intended to "perpetuate, communicate, or formalize knowledge of some type."

Accordingly, records which are *not* made or received in connection with the transaction of official business do not constitute public records for purposes of Ch. 119 disclosure requirements. *See e.g. Butler v. City of Hallandale Beach,* 68 So. 3d 278 (Fla. 4th DCA 2011) (e-mail sent by mayor from her personal account using her personal computer and blind copied to friends and supporters did not constitute a public record because the e-mail was not made pursuant to law or ordinance or in connection with the transaction of official business). Similarly, text messages from a city commissioner to her husband during a city commission meeting which were 'uniformly personal and private' and were not made in connection with any business transacted by the city, "did not possess the attributes of official business and, therefore, did not become subject to public records inspection." *City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022). The court noted that the commissioner was not acting in her official capacity when she texted with her husband; "[n]or did her husband step out of his role as husband and adopt the role of a citizen either seeking to enter a City process or to transact City business." *Id.*

In evaluating whether a record is made or received in connection with the official business of an agency, "the determining factor is the nature of the record, not its physical location." *State v. City of Clearwater,* 863 So. 2d 149, 154 (Fla. 2003). In *Clearwater*, the Court held that personal e-mails between government employees on government-owned computers which were not made

or received in the course of official business did not constitute public records. *See also Bent v. State,* 46 So. 3d 1047, 1050 (Fla. 4th DCA 2010) (recordings made by sheriff's office of personal telephone calls between minors in jail awaiting trial and third parties are not public records when contents of the phone calls do not involve criminal activity or a security breach); and *Media General Operations, Inc. v. Feeney,* 849 So. 2d 3 (Fla. 1st DCA 2003) (records of personal or private calls of legislative employees using cellular phone service provided by a political party do not constitute official business of the Legislature and are not subject to public disclosure).

However, in concluding that the location of e-mails on a government computer does not control the application of Public Records Act, the *Clearwater* court also cautioned 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." *State v. City of Clearwater,* at 151n.2. *And see 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 pilots' administrative duties are distinguishable from personal e-mails in *City of Clearwater* case and are subject to disclosure). *See also* AGO 09-19 (because the creation of a city Facebook page must be for a municipal, not private purpose, the "placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes"),

Thus, in *Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), available online in the Cases database at the open government site at myfloridalegal.com, the court concluded that 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." *See also* AGO 77-141 (copies of letters or other documents received by the mayor in his official capacity constitute records received "in connection with the transaction of official business" and therefore are public records). *Compare* Inf. Op. to Burke, April 14, 2010 (while the licensing board, and not Attorney General's Office, must determine whether a letter, allegedly sent to the board by mistake, had been received by the board in connection with the transaction of official business, the board "may wish to consider whether circumstances characterize how the document was received, such as does the letter relate to a past, existing, or potential investigation by the board").

Similarly, the mere fact that an e-mail is sent from a private e-mail account using a personal computer is not the determining factor as to whether it is a public record; it is whether the e-mail was prepared or received in connection with official agency business. *See Butler v. City of Hallandale Beach, supra.* For example, if a public employee sends a proposed agency budget to his or her supervisor for review, the report is a public record, regardless of whether the report was sent from the employee's agency e-mail account using a government computer, or from his or her home computer using a personal e-mail account. *And see* AGO 08-07 (individual council members who post comments and emails relating to transaction of city business on a privately-owned and operated website "would be responsible for ensuring that the information is maintained in accordance with the Public Records Law").

"An elected official's use of a private cell phone to conduct public business via text messaging can create an electronic written public record subject to disclosure." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018). However, in order for the communication to constitute a public record, "an official or employee must have prepared, owned, used, or retained it within the scope of his or her employment or agency." *Id.* at 1040-1041. According to the *O'Boyle* court, an official or employee's communication "falls 'within the scope of employment or agency' only when their job requires it, the employer or principal directs it, or it furthers the employer's or principal's interests." *Id.* at 1041. *Cf.* AG0 16-16 (hospital

district not authorized to reimburse a board member for attorney fees incurred in responding to a public records request for records relating to her board service which were stored in her private computer and telephone when no suit, claim, charge, or action was instituted against the commissioner when the fees were incurred).

18. Personnel records

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted certain 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. *See Michel v. Douglas,* 464 So. 2d 545 (Fla. 1985).

a. 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.

b. Applications for employment, references, and resumes

Applications and resumes are subject to disclosure, after redaction of statutorily exempt information such as social security numbers. *See Shevin v. Byron, Harless,* Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980); and AGOs 15-10 and 77-48. Similarly, communications from third parties are subject to disclosure. *See Douglas v. Michel,* 410 So. 2d 936 (Fla. 5th DCA 1982), *questions answered and approved,* 464 So. 2d 545 (Fla. 1985). A written employment contract is a public record. AGO 13-14.

Section 1004.098(1)(a), F.S., establishes confidentiality for personal identifying information of applicants for president of a state university or Florida College System institution. The age, race, and gender of applicants who met the minimum qualifications for the position who were considered and the personal identifying information of applicants included in the final group of applicants are no longer confidential beginning at the earlier of the date the final group of applicants is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of employment of an applicant. Section 1004.098(1)(b), F.S. *Cf.* AGO 23-04, advising that the Sunshine Law does not permit members of a university presidential search committee to use a search firm to anonymously rank candidates to affect which candidates the committee will consider at a future meeting, and that the exemption from the Sunshine Law in s. 1004.098(2)(b), F.S., "applies only when the committee fulfills all criteria of the exemption, such as recording the entire portion of the exempt meeting."

c. 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, a 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 retention schedules established by the Division of Library and Information Services of the Department of State. AGO 94-75. *Accord* AGO 94-54.

(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.

d. Complaints against employees

Section 119.071(2)(k), F.S., provides that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint is confidential and exempt until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or

b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

Prior to the enactment of this statute in 2013, there was no general exemption from public disclosure for complaints and investigative records based on alleged misconduct by agency employees. *See e.g.,* AGO 04-22 (anonymous letter sent to city officials containing allegations of misconduct by city employees is a public record). Instead, the Legislature enacted exemptions pertaining to specific types of complaints and investigations. *See e.g.* s. 943.03(2), F.S., providing for confidentiality of Florida Department of Law Enforcement records relating to an active investigation of misconduct, in connection with their official duties, of public officials and employees and of members of public corporations and authorities subject to suspension or removal by the Governor.

For information on the exemptions for whistleblower, discrimination and ethics complaints directed against public officials and employees, please refer to the discussion on pages 98-101. A discussion of exemptions addressing complaints against law enforcement officers and educators follows:

(1) Law enforcement officers and correctional officers

(a) Scope of exemption and duration of confidentiality

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, 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.

The term "law enforcement officer" is defined as any person, other than a chief of police, who is employed full time or part 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 under s. 30.07, F.S. Section 112.531(3), 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). *Cf. Fraternal Order of Police v. Rutherford,* 51 So. 3d 485, 488 (Fla. 1st DCA 2010) (written complaint not necessary to trigger confidentiality afforded by s. 112.532[4][b], F.S., as that statute provides a broader confidentiality for ongoing investigations whenever a law enforcement or correctional officer faces possible dismissal, demotion, or suspension without pay until the investigating agency "completes or abandons its investigation").

While s. 112.533, F.S., applies to complaints and records obtained pursuant to the law enforcement 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. *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").

(b) 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.

(c) 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.,* AGO 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). *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."

(2) Public school system employees

The complaint and material relating to the investigation of a complaint against a public school system employee 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). *Cf. Johnson v. Deluz,* 875 So. 2d 1,3 (Fla. 4th DCA 2004) (because "legislature had no intention of permitting confidential student information to be made public," student-identifying information must be redacted from public report of investigation of school principal); and *Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about a college instructor's classroom behavior qualifies as an exempt "education record").

While s. 1012.31(1)(b), F.S., prohibits placing anonymous letters and material in a school district 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. Moreover, 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.

(3) State university and Florida College System institution employees

For information on statutory exemptions for complaints filed against state university or Florida College System institution (formerly community college) employees, please refer to the discussion of employee evaluations on pages 143.

e. 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.). *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").

Thus, while an agency is not precluded from notifying an employee that a request has been made to inspect his or her personnel records, in the absence of express legislative authority, the production 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. *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.

(1) Privacy issues

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 Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and *Mills v. Doyle,* 407 So. 2d 348 (Fla. 4th DCA 1981). *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."

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. *See e.g., 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).

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").

(2) Sealed records

An agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. AGO 94-75. Nor may an agency, 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 for the purpose of removing such records from public access. AGO 94-54. *Accord* AGO 11-19 (superintendent's failure to comply with a statutory requirement to discuss a performance evaluation with the employee before filing it in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed). *And see* AGO 15-10 (agency may not "seal" job applications or request that they be submitted as "sealed" records to foreclose public access).

f. Criminal history information

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990.

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(2)(d) and (e), F.S. (agency positions designated or specified as provided in s. 110.1127, F.S.); s. 1002.36(7)(d) and (e), F.S. (School for the Deaf and the Blind); and s. 39.821(1) F.S. (guardian ad litem).

Federal confidentiality provisions also apply to criminal history information received from the U.S. government. For example, 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. 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.*

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.

g. 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. Section 112.215(7), F.S.

h. 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.

i. 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, 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 (t), 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), F.S., provides for confidentiality of drug test results or other information received as a result of a drug-testing program implemented pursuant to Ch. 440, F.S. AGO 13-19. *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 reemployment assistance 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.

j. 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.

k. 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). *Cf.* s. 1004.098(1), F.S., discussed on page 135 establishing an exemption for personal identifying information of applicants for president of a state university or Florida College institution.

l. Evaluations of employee performance

Evaluations of public employee performance are generally subject to disclosure. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisher,* 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.

However, there are statutory restrictions on access to evaluations of employee performance for public school system employees. Section 1012.31(3)(a), F.S. Similarly, there are exemptions for evaluations contained in limited-access records prescribed by a hospital or other facility licensed under Ch. 395, F.S., for employees of the facility, s. 395.3025(9), F.S.; prescribed by the State Board of Education for Florida College System institution employees, s. 1012.81, F.S.; or prescribed by a university board of trustees for its employees, s. 1012.91, F.S.

A discussion of each of these exemptions follows:

(1) Hospital employees

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), available online in the Cases database at the open government site at myfloridalegal.com (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).

(2) Public school employees

Employee evaluations of public school system employees prepared pursuant to cited statutes 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. However, the exemption applies only to the "employee evaluation." *See Morris Publishing Group, LLC v. Department of Education,* 133 So. 3d 957, 960 (Fla. 1st DCA 2013), *review denied,* 157 So. 3d 1046 (Fla. 2014) ("While section 1012.31[3][a]2 provides that the evaluation of a public school teacher is not subject to disclosure under the public records law, it does not follow that any information or data used to prepare the evaluation is likewise exempt from disclosure").

Moreover, 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. In addition, written comments and performance memoranda prepared by individual school board members regarding an appointed superintendent are not exempt from disclosure. AGO 97-23. *Cf.* AGO 11-19, concluding that a superintendent's failure to comply with a statute requiring that a performance evaluation be discussed with an employee before it is

filed in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed.

(3) State university and Florida College System institution employees

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.

"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 exemption; 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. Section 1012.91(1), F.S.

For sexual harassment investigations of university personnel, portions of records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records. Section 1012.91(2), F.S. 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.

Regarding Florida College System institution employees, 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 Florida College System institution on its employees. Such records are limited to information reflecting academic evaluations of employee performance and certain disciplinary and grievance records as described in the exemption. Limited access records are confidential and exempt and may not be released except as authorized in the exemption. *Cf. Rhea v. District Board of Trustees of Santa Fe College,* 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about an instructor's classroom behavior qualifies as an exempt "education record").

m. 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"). *And see Rush v. High Springs,* 82 So. 3d 1108 (Fla. 1st DCA 2012) (exemption applies to questions and answers contained in pre-employment polygraph examinations).

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. *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.

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.

n. Home addresses, telephone numbers and other personal information

In the absence of statutory exemption, home addresses, telephone numbers, photographs, and dates of birth 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); *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 see United Teachers of Dade v. School Board of Dade County,* No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992), available online in the Cases database at the open government site at myfloridalegal.com (home telephone numbers and addresses of school district employees not protected by constitutional right to privacy; only the Legislature can exempt such information). *Cf.* AGO 85-03 (list containing names and addresses of subscribers to state magazine is a public record).

(1) Listing of public officers and employees covered by exemptions

The home addresses, telephone numbers, and other specified personal information pertaining to certain public officers and employees and their spouses and children have been exempted in ss. 119.071(4)(d) and 119.071(5)(i) F.S. The term "home address" for purposes of s. 119.071(4)(d), F.S., means "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address." Section 119.071(4)(d)1.a., F.S.

For purposes of s. 119.071(4)(d), F.S., the term "telephone numbers" includes "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." Section 119.071(4)(d)1.c., F.S.

(a) Abuse investigators for Department of Children and Families and Department of Health

a. Scope of exemption: Active or former personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft or other criminal activities; and active or former personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

(b) Child advocacy personnel and child protection team members

a. Scope of exemption: Current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2) and fulfills the screening requirements of s. 39.3035(3) and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth 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

d. Statutory reference: Section 119.071(4)(d)2.t., F.S.

(c) Code enforcement officers

a. Scope of exemption: Current or former code enforcement officers

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.i., F.S.

(d) County addiction facility personnel

a. Scope of exemption: Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility. The term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401, and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26)

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.s., F.S.

(e) County tax collectors

a. Scope of exemption: County tax collectors

b. Information exempted: Home addresses, telephone numbers, and dates of birth

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.n., F.S.

(f) Domestic violence advocates

a. Scope of exemption: Current or former staff and domestic violence advocates, as defined in s. 90.5036(1)(b), of domestic violence centers certified by the Department of Children and Families under chapter 39

b. Information exempted: Home addresses, telephone numbers, places of employment, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, places of employment, dates of birth, and photographs 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

d. Statutory reference: Section 119.071(4)(d)2.u., F.S.

(g) Domestic violence and other specified crime victims

Please refer to the discussion on page 78.

(h) Emergency medical technicians or paramedics

a. Scope of exemption: Current or former emergency medical technicians or paramedics certified under Ch. 401, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.q., F.S.

(i) Firefighters

a. Scope of exemption: Current or former firefighters certified in compliance with s. 633.408, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of spouses and children of such firefighters; and the names and locations of the schools and day care facilities attended by the children of the firefighters

d. Statutory reference: Section 119.071(4)(d)2.d., F.S.

(j) Guardians ad litem

a. Scope of exemption: Current or former guardians ad litem, as defined in s. 39.820, F.S.

b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons

d. Statutory reference: Section 119.071(4)(d)2.j., F.S.

(k) Hospital employees

Please refer to the discussion on page 97.

(l) Human resource managers (local governments)

a. Scope of exemption: 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

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.h., F.S.

(m) Impaired practitioner consultants

a. Scope of exemption: Current or former impaired practitioner consultants retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession

b. Information exempted: Home addresses, telephone numbers dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees

d. Statutory reference: Section 119.071(4)(d)2.p., F.S.

(n) Inspectors general and internal auditors performing specified duties

a. Scope of exemption: Current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.r., F.S.

(o) Investigators and inspectors of the Department of Agriculture and Consumer Services

a. Scope of exemption: Current or former investigators or inspectors of the Department of Agriculture and Consumer Services

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.v., F.S.

(p) Investigators and inspectors of the Department of Business and Professional Regulation

a. Scope of exemption: Current or former investigators or inspectors of the Department of Business and Professional Regulation

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: 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

d. Statutory reference: Section 119.071(4)(d)2.m., F.S.

(q) Investigators of the Department of Financial Services and Office of Financial Regulation with specified duties

a. Scope of exemption: Current or former nonsworn investigative personnel of the Department of Financial Services and Office of Financial Regulation whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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.

d. Statutory reference: Section 119.071(4)(d)2.b., and c., F.S.

(r) Judges, magistrates, hearing officers, and judicial assistants (state)

I. Administrative law judges, magistrates, and child support hearing officers

a. Scope of exemption: General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.g., F.S.

II. Court justices and judges

a. Scope of exemption: Current or former Justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of such justices and judges

d. Statutory reference: Section 119.071(4)(d)2.e., F.S.

III. Judicial assistants

a. Scope of exemption: Current judicial assistants, defined in s. 119.071(4)(d)1.b., to mean "a court employee assigned to the following class codes: 8140, 8150, 8310, and 8320"

b. Information exempted: Home addresses, dates of birth, and telephone numbers

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.e., F.S.

(s) Juvenile Justice juvenile probation and detention officers and counselors

a. Scope of exemption: Current or former juvenile probation officers and supervisors, detention superintendents and assistant superintendents, juvenile justice detention officers and supervisors, juvenile justice residential officers and supervisors, juvenile justice counselors, supervisors, and administrators, human services counselor administrators, rehabilitation therapists and social services counselors of the Department of Juvenile Justice

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.k., F.S.

(t) Law enforcement and correctional personnel

a. Scope of exemption: Active or former sworn law enforcement personnel or active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

(u) Personnel of the Department of Health with specified duties

a. Scope of exemption: Current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health

b. Information exempted: Homes addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.o., F.S. *See also* s. 119.071(4)(d)2.a., F.S. (child abuse or neglect investigators).

(v) Prosecutors and judges (federal)

a. Scope of exemption: Current or former United States attorneys, assistant United States attorneys, judges of the United States Courts of Appeal, United States district judges or United States magistrates if the individual submits 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 he or she has made reasonable efforts to protect such information from being accessible through other means available to the public

b. Information exempted: Home address, telephone number and photograph

c. Family information exempted: Home address, telephone number, photograph, and place of employment of the spouse or child; and the name and location of the school or day care facility attended by the child of such attorney, judge or magistrate

d. Statutory reference: Section 119.071(5)(i), F.S.

(w) Prosecutors (state)

a. Scope of exemption: Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.f., F.S.

(x) Public defenders and other specified counsel

a. Scope of exemption: Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.l., F.S.

(y) Public guardians

a. Scope of exemption: Current or former public guardians and employees with fiduciary responsibility, as that term is defined in the exemption, who submit to the custodial agency a written request for maintenance of the exemption. The term "employee with fiduciary responsibility" means an employee of a public guardian who has the ability to direct any transactions of a ward's funds, assets, or property; who under the supervision of the guardian, manages the care of a ward; or who makes any health care decision, as defined in s. 765.101, on behalf of a ward

b. Information exempted: Home addresses, telephone numbers, and dates of birth. Photographs of former public guardians and employees with fiduciary responsibility are also exempt.

c. Family information exempted: Names, home addresses, telephone numbers, and dates of birth of the spouses and children of such persons who are not themselves current or former guardians with fiduciary responsibility, and the names and locations of schools and day care facilities attended by the children of such personnel

d. Statutory reference: Section 744.21031(2), F.S.

(z) Revenue collection and enforcement or child support enforcement

a. Scope of exemption: Active or former personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement

b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, 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

d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

Note: In AGO 96-57, the Attorney General's Office concluded that this exemption should be construed as including personnel whose duties include *both* revenue collection and enforcement, as opposed to those personnel whose duties include only revenue collection or only revenue enforcement.

(2) Authority to release protected information

The purpose of the s. 119.071(4)(d), F.S., exemption is to protect the safety of the enumerated individuals and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. AGO 10-37. *And see* AGOs 90-50 and 96-57. The statute makes these records exempt from mandatory disclosure requirements, not confidential; thus, an agency is not prohibited from disclosing the information in all circumstances. AGO 10-37.

However, in determining whether to disclose the information, the agency should consider the underlying purpose of the statute, *i.e.,* safety of the listed individuals and their families. AGO 90-50. *See also* AGO 08-24. *Cf.* AGO 90-50, noting that the exemption does not prohibit an agency from "access to, and maintaining information on, its employees, including their names and addresses."

In other words, a police department, in deciding whether to publicly release photographs of law enforcement personnel, should determine whether there is a statutory or substantial policy need for disclosure. AGO 07-21. 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)2. *Id.* For example, 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. AGO 90-50.

Similarly, in AGO 08-24, the Attorney General's Office noted that the home addresses and other protected personal information of the spouses of law enforcement officers who are employed by the school board are exempt from disclosure under s. 119.071(4)(d)2., F.S., and therefore, the school board was not required to report such information to the certified bargaining representative. *And see 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").

By contrast, 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. Inf. Op. to Reese, April 25, 1989. Similarly, a police and firefighter pension board may release exempt employee information pursuant to a confidentiality agreement for use by a vendor that has contracted with the board to conduct cybersecurity testing of the board's electronic data storage systems. AGO 19-08.

A 2017 Attorney General Opinion advised that a property appraiser may disclose the

address of an alleged violator of the local code when a code inspector or code enforcement board is attempting to provide notice regarding the violation as required by s. 162.06, F.S. AGO 17-05. The code inspector's statutory duty to notify an alleged code violator of a violation warrants use of an otherwise exempt address for the limited purpose of providing such notice and does not authorize further disclosure of the address. *Id. Cf.*, s. 119.071(4)(d)7., F.S.(2021), brought into the statutes by s. 3, Ch. 21-215, Laws of Florida, providing that exempt information "may be disclosed pursuant to s. 28.2221[relating to exempt information in the Official Records] to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar."

The s. 119.071(4)(d)2., F.S., exemption applies to public agencies, not private entities unless the private entity is acting on behalf of a public agency. Inf. Op. to Gomez, Nov. 3, 2008. *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.

(3) Records held by agencies that are not the employer of the designated officers or employees

An agency that is the custodian of personal information specified in s. 119.071(4)(d)2., F.S., but is not the 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)3., F.S. *See* AGOs 97-67 (Official Records maintained by clerk of court), 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections), and 04-20 (property appraiser). *And see* AGO 05-38 (request made to the property appraiser for an exemption from disclosure of personal information would follow the property appraiser's records when they are relayed to the clerk of courts carrying out duties for the Value Adjustment Board).

The request must be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status. Section 119.071(4)(d)3., F.S.

The provisions of s. 119.071(4)(d), F.S., should not be read "to impose a burden on employers to know the past law enforcement employment status of employees who may work for them in other capacities." AGO 10-37. Thus, a former law enforcement officer from one municipality who is currently employed by another municipality in a non-law enforcement capacity must make a written request pursuant to s. 119.071(4)(d)3., F.S., that his or her personal information be maintained as exempt by the current employer. *Id.*

A request made pursuant to s. 119.071(4)(d)3., F.S., for maintenance of exempt information in court records or the official records must specify the document type, identification number, and page number of the court record or official record that contains the exempt information. Section 119.0714(2)(f) and (3)(f), F.S.

A covered officer or employee or other specified person may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information. Section 119.071(4)

(d)5., F.S. *And see* s. 119.071(4)(d)4., F.S., specifying duties of property appraisers and county tax collectors with respect to a request for maintenance of exempt status; s. 119.071(4)(d)8., F.S., providing that the exempt status of a home address contained in the Official Records is maintained only during the period when a protected party resides at the dwelling location; and s. 119.071(4)(d)9., F.S., providing procedures for a request for release of protected decedent's removed information.

(4) Application of exemption to:

(a) Telephone numbers of cellular telephones issued by agencies

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. Inf. Op. to Laquidara, July 17, 2003. In 2012, the Legislature amended s. 119.071(4)(d), F.S., to define the term "telephone numbers" as used in the exemption to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." *See* s. 119.071(4)(d)1.c., F.S. As originally introduced, the 2012 legislation would have also included "telephone numbers associated with agency cellular telephones" within the definition of "telephone numbers." *See* HB 629, filed November 10, 2011. However, this proposed language was removed from the original bill during the legislative process.

(b) List of names of designated officers and employees

While s. 119.071(4)(d)2., F.S., exempts home addresses and other personal information of the designated public officers and employees, it does not exempt the *names* of these officers and employees from public disclosure (although typically the names of the *spouses and children* are exempt). *See, e.g.,* s. 119.071(4)(d)2.g., F.S. (names of spouses and children of code enforcement officers are exempt).

Accordingly, the Attorney General's Office advised that if the property appraiser maintains a list of the names of officers and employees who have requested the exemption of their home addresses as authorized by s. 119.071(4)(d)3., F.S., this list is not exempt. AGO 08-29. *Cf.* s. 119.071(4)(d)4.a., F.S. (2021), relating to removal of the name of the individual who has requested exempt status and the instrument number or Official Records information identifying the property from publicly available records maintained by the tax collector or property appraiser.

However, as noted elsewhere in this manual, an agency is not required to *create* or reformat records in order to comply with a request under Ch. 119; the duty of the public records custodian is to provide access to existing records. *See* the discussion in pages 169-170.

(c) Prior home addresses

Section 119.071(4)(d)2., F.S., applies only to the current home address or addresses (including a current vacation home address) of the designated individuals. AGO 10-37.

(d) Maps showing physical location of homes

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 exemption request from the officer. AGO 04-20. *See also* the definition of the term "home address" as defined in s. 119.071(4)(d)1.a., F.S.

(e) Home addresses of persons who are not the owner of the property

The exemption applies to the home addresses, telephone numbers, and other personal information relating to the specified individuals "without regard to whether or not they own the real property at which they reside." AGO 14-07.

(f) Booking photographs

Section 119.071(4)(d), F.S., exempts the photograph of a current or former law enforcement officer, whether held by the employing agency or by a nonemploying agency which has received a written request to maintain the exempt status of the record pursuant to s. 119.071(4)(d)3., F.S. Inf. Op. to Amunds, June 8, 2012. Thus, the agency should determine whether there is a statutory or substantial policy need for disclosure before releasing the booking photograph. *Id.* In the absence of a statutory or other legal duty to be accomplished by disclosure, an agency should consider whether the release of such information is consistent with the purpose of the exemption, *i.e.*, the safety of law enforcement officers and their families. *Id. See also* AGOs 90-50 and 07-21. *Cf.* AGO 94-90 (statute did not preclude release of booking photograph of deputy who was not an undercover officer whose identity would otherwise be protected by s. 119.071(4)(c), F.S.).

o. Medical information and health insurance participant information

(1) Medical information and medical claims records

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"). *Cf. Delaurentos v. Peguero*, 47 So. 3d 879, 881 (Fla. 3d DCA 2010) (s. 119.071[4][b]1. F.S., "simply provides an exemption in the event that a citizen makes a public records request for medical records;" but does not "create a privilege which would insulate such records from discovery in litigation").

Public school system employee medical records, including psychiatric and psychological records, are confidential and exempt from s. 119.07(1), F.S. Section 1012.31(3)(a)5., F.S.

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(10) (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 01-33 (confidentiality of patient records at medical clinic owned and operated by city for the use and benefit of its employees); 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").

(2) Health insurance participant information

While "information relating to an insurance program participant's medical condition is protected from disclosure . . . there is no clear statement that such protection extends to the name, address, age, or other non-medical information of such participants." Inf. Op. to Dockery, November 10, 2008.

Subsequent to the issuance of this opinion, 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 s. 409.2554, F.S.) is insured by the agency's group insurance plan. Section 119.071(4)(b)2., F.S. However, 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. *Cf.* s. 110.12301(3), F.S., providing confidentiality for records collected for purposes of dependent eligibility verification services conducted for the state group insurance program and held by the Department of Management Services.

p. Payroll deduction records

There is no general exemption from disclosure that applies to agency payroll deduction records. However, *public school system employee* payroll deduction records are confidential. Section 1012.31(3)(a)4., F.S. *See* AGO 09-11 (tax information [such as Federal Withholding Tax Deduction, FICA Tax Deduction and the Medicare Tax Deduction] of a public school system employee would appear to constitute payroll deduction records and would be confidential and exempt from disclosure pursuant to s. 1012.31[3][a]4., F.S.).

q. Retiree lists

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. "Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired." *Id. Cf.* s. 121.4501(19), F.S. (personal identifying information of members in the investment plan contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt).

Section 121.021(60), F.S., defines the term "retiree" to mean "a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member." Accordingly, the s. 121.031(5) exemption does not apply to employees who are participants in the Deferred Retirement Option Program (DROP); DROP participants "are not retirees since they have not terminated their employment." *Palm Beach Newspapers, Inc. v. School Board of Palm Beach County,* No. 502007CA020000XXXXMB (Fla. 15th Cir. Ct. November 28, 2007), available online in the Cases database at the open government site at myfloridalegal.com.

r. Salary records

Salary and other information relating to compensation is subject to disclosure. *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), available online in the Cases database at the open government site at myfloridalegal.com. *Accord* AGOs 80-92 and 73-30.

s. Travel records

Travel vouchers are open to public inspection, after redaction of exempt material such as credit card account numbers (s. 119.071[5][b], F.S.) or social security numbers (ss. 119.071[4] a] and [5][a]F.S). *See Shevin v. Byron, Harless, Schaffer, Reid and Associates,* 379 So. 2d 633 (Fla. 1980). *See also* AGO 72-356 (travel itineraries and plane reservations for use of state aircraft are public records). *Cf. Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612

(Fla. 1st DCA 2019), finding that premature disclosure of prospective information relating to the Governor's detailed schedule and travel plans would reveal surveillance techniques, procedures, or personnel which are exempt pursuant to s. 119.071(2)(d), F.S. *See now* s. 943.68(10)(a), F.S. (records held by a law enforcement agency relating to security or transportation services provided to the Governor or other specified persons by the Department of Law Enforcement as provided in ss. 943.68(1)(5) or (6), F.S., are exempt from disclosure requirements).

t. Undercover personnel of criminal justice agencies

Please refer to the discussion of this topic on page 121.

19. Security system information and blueprints

a. Blueprints

Section 119.071(3)(b)1., F.S., exempts building plans, blueprints, schematic drawings, and diagrams 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. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the structure, 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* 119.071(3)(e), F.S. (exemption for records which depict structural elements of 911, E911 or public safety radio communications system infrastructure, structures, or facilities owned and operated by an agency; and geographical maps indicating actual or proposed locations of such infrastructure, structures, or facilities).

Section 119.071(3)(c)1., F.S., exempts building plans, blueprints, schematic drawings and diagrams which depict the internal layout or structural elements of various attractions, retail, resort, office, health care facilities, 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)3., F.S. *And see* s. 119.071(3)(d) (information relating to the National Public Safety Broadband Network deemed confidential if disclosure would reveal information set forth in the exemption)

b. Security system records

Section 119.071(3)(a), F.S., provides confidentiality for a security or firesafety plan for property owned or leased to the state or any of its political subdivisions. The term "security or firesafety plan" includes records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems. The term also includes threat assessments, threat response plans, emergency evacuation plans, sheltering arrangements, and security or firesafety manuals. *Cf. Marino v. University of Florida,* 107 So. 3d 1231 (Fla. 1st DCA 2013), in which the court rejected a university's contention that it could withhold the location of animal research facilities based on a determination that the nature of the public activities occurring at the facility subjects them to physical threats.

The exemption extends to such information concerning privately owned or leased property which is in the possession of an agency. *See* AGOs 01-75 and 93-86, and Inf. Op. to Sherman, July 2, 2018. *See also* ss. 331.22, F.S. (airport security plans); s. 311.13, F.S. (seaport security plans); and 1004.0962(2), F.S. (campus emergency response of postsecondary education institution). *Cf.* s. 943.68(10)(a), F.S. (records held by a law enforcement agency relating to security or transportation services provided by the Florida Department of Law Enforcement to certain persons under ss. 943.68(1), (5), or (6), F.S., are exempt from disclosure requirements).

Confidential information may be disclosed to the property owner or leaseholder; in furtherance of the official duties and responsibilities of the agency holding the information; to another local, state or federal agency in furtherance of that agency's official duties and responsibilities; or upon a showing of good cause before a court. Section 119.071(3)(a)3., F.S.

(1) Security system (alarm) permits and applications

Section 119.071(3)(a), F.S., prohibits 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.

(2) Surveillance video recordings

The term "security or firesafety system plan" as used in s. 119.071(3)(a)1., F.S., includes "audio and visual presentations . . . relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems." Video footage captured by city bus cameras "directly relates to and reveals information about a security system" and thus was determined to be confidential and exempt from disclosure by ss. 281.301 and 119.071(3)(a), F.S. *Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d 401 (Fla. 5th DCA 2015). The videos "reveal the capabilities—and as a corollary, the vulnerabilities" of the security system. *Id.* at 405. *And see* AGO 15-06, relying on *Central Florida Regional Transportation Authority*, and applying the exemption to surveillance tapes from a security system for a public transit authority building. *Cf. Gonzalez v. State*, 240 So. 3d 99 (Fla. 2d DCA 2018) (in the absence of an in camera inspection of the requested records [CDs] the circuit court could not conclude that the contents were exempt from disclosure nor could it determine whether redaction was possible); and *City of Miami v. Blanco*, 336 So. 3d 1268 (Fla. 3d DCA 2022) (trial court departed from essential requirements of law by failing to conduct in camera review before granting defendant's motion to compel and/or for a subpoena for video camera recordings taken at police station following his arrest; without an in camera inspection, the judge could not determine whether the video recordings fell within the security plan exemption).

Video footage from surveillance cameras at a high school "relates directly" to the security system at the school, including both its capabilities and its vulnerabilities, and thus is confidential and exempt from disclosure unless one of the exceptions to the exemption applies. *State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205 (Fla. 4th DCA 2018). As previously discussed on page 157, there are several exceptions to this confidentiality provision, including a court order issued upon a showing of good cause. In *State Attorney's Office*, the appellate court affirmed the trial judge's order mandating release of surveillance video from a school shooting where 17 students and staff were killed. The court found that the media had established good cause because the footage revealed the conduct of public servants in the discharge of their duties and also provided "insight" into the high school's security "net" that failed to protect the students and staff. *Id*. at 215.

By contrast, the First District overturned the trial court's determination that a news organization had shown good cause to obtain security footage from two correctional institutions. *Florida Department of Corrections v. Miami Herald Media Company*, 278 So. 3d 786 (Fla. 1st DCA 2019). At the hearing, the Miami Herald advised that it no longer needed the video recordings as they were no longer newsworthy. Nevertheless the court still found that the Herald had satisfied the statutory exception to confidentiality, noting the awards the journalist received for her reporting on prison issues, and that this fact, combined with the "extremely important right of freedom of the press" constituted good cause. The appellate court reversed, finding that the Herald "extinguished any claim to good cause when it unambiguously renounced its need for the video footage." 278 So. 3d at 790.

c. Cybersecurity

Section 119.01(2)(a), F.S., states that agencies "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." *Cf.* AGO 19-08 (pension board authorized to release nonpublic personnel information pursuant to a confidentiality agreement with a vendor conducting cybersecurity testing of the board's electronic data storage systems).

Accordingly, an agency is not required to provide direct access to the agency's electronic records through a hard drive provided by a requester, but must otherwise allow inspection and copying of such records in a manner which will accommodate the request, but protect exempt or confidential materials from disclosure. AGO 13-07. *And see 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 119.0725(2), F.S., provides that the following information held by an agency is confidential: coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency; information relating to critical infrastructure; cybersecurity incident information reported pursuant to s. 282.318 or 282.3185, F.S.; network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information or information technology resources. Key terms used in this exemption such as "information technology" and "incident" are defined in s. 119.0725(1), F.S. Section 119.0725(5)(a), F.S., specifies agencies authorized to receive confidential information.

There are other exemptions which address cybersecurity issues. For example, s. 282.318(4), F.S., requires state agencies, as defined in the statute, to conduct risk assessments, and internal audits, as well as to develop policies and procedures to address cybersecurity issues. This section also contains exemptions for records relating to these functions. *See* s. 282.318(4)(d), (e), and (g), and (5), F.S. *And see* s. 119.0713(5)(a), F.S. (records relating to security of information technology systems of local government owned or operated utilities); s. 627.352 (Citizens Property Insurance Corporation) and s. 1004.055(1), F.S. (state postsecondary education institutions). Secure login credentials held by the Department of Highway Safety and Motor Vehicles are exempt, as are Internet protocol addresses, geolocation data, and other information from which a user accesses a public facing portal. Section 119.0712(2)(f), F.S. *And see* the discussion of the exemptions from the Sunshine Law for cybersecurity meetings found on pages 36-37.

d. School system security

Section 943.082(1), F.S., requires the Florida Department of Law Enforcement to acquire a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities to appropriate public safety agencies and school officials. The identity of the reporting party received through the reporting tool and held by the Department of Law Enforcement, Department of Education, law enforcement agencies, or school officials is confidential and exempt. Section 943.082(6), F.S. Any other information received through the reporting tool and held by the above agencies is exempt. *Id. And see* ss. 1004.0962(2), F.S. (campus emergency response held by a public postsecondary institution or specified agencies is exempt from disclosure); and 1004.055(1) (certain security incident information records held by state postsecondary education institution). *Cf.* s. 119.071(3)(a), F.S., providing an exemption for agency security system plans, discussed on pages 156-158.

Any information that would identify whether an individual has been appointed as a safe-school officer pursuant to s. 1006.12, F.S., held by a law enforcement agency, school district, or charter school is exempt. Section 1006.12(8), F.S. *See also* s. 1002.42(18)(c), F.S. (individuals assigned as a safe-school officer at a private school).

20. 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. *See Department of Health v. Rehabilitation Center at Hollywood Hills*, 259 So. 3d 979, 981 (Fla. 1st DCA 2018), noting the confidential status of social security numbers.

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. Section 119.071(5)(a)5., F.S. *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). *And see* s. 119.0714, F.S., regarding confidentiality of social security numbers in court records and in the official records.

Section 119.071(5)(a)6., F.S, authorizes disclosure of social security numbers under certain conditions. In addition, s. 119.071(5)(a)7.b., F.S., states that an agency may not deny a commercial entity engaged in "commercial activity," as defined in the exemption, 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." "Commercial activity" 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. Section 119.071(5)(a)7.a.(I), F.S. *See* Inf. Op. to Carland, January 12, 2012 (teacher union's access to social security numbers maintained by school district limited to those social security numbers which will be used to verify the accuracy of numbers which the union has already received in the normal course of business) and AGO 19-08 (pension board authorized to release social security numbers pursuant to a confidentiality agreement to a vendor conducting cybersecurity testing on the board's electronic data storage systems).

The written request must be verified as provided in Florida law and meet the other requirements specified in the exemption. *See Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005). *See also* AGO 10-06 (agency authorized 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).

21. Telephone records

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. *Cf.* s. 119.071(5)(d), F.S. (all records supplied by a telecommunications company, as defined by s. 364.02, F.S., to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt). *And see* 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).

In *Bill of Rights, Inc. v. City of New Smyrna Beach,* No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), available online in the Cases database at the open government site at myfloridalegal.com,

the court 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.

Additionally, in responding to a question from a police department regarding the provisions of Ch. 934, F.S., (interception of wire and oral communications), the Attorney General's Office advised that recordings of telephone conversations made by the police department in the usual course of business would be public records subject to the inspection, copying, and retention requirements of Ch. 119, F.S. AGO 12-07. "Any such public records would likewise be subject to the exemption and confidentiality provisions of the Public Records Law." *Id. And see Morris Publishing Group, LLC v. State,* 154 So. 3d 528, 532 (Fla. 1st DCA 2015), *review denied,* 163 So. 3d 512 (Fla. 2015) ("No one disputes" that phone recordings of telephone calls made by the defendant while incarcerated and provided in criminal discovery were public records). *Compare Bent v. State,* 46 So. 3d 1047 (Fla. 4th DCA 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).

22. Trade secrets and proprietary confidential business information

a. Trade secrets

Prior to the adoption of s. 119.0715, F.S., "documents submitted by a private party which constitute trade secrets as defined in s. 812.081," F.S., and which were stamped as confidential at the time of submission to an agency by a private party, were found to be not subject to public access. *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781, 784(Fla. 1st DCA 2003), r*eview denied sub nom., Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005). *And see Seta Corporation of Boca, Inc. v. Office of the Attorney General*, 756 So. 2d 1093 (Fla. 4th DCA 2000).

Section 119.0715(2), F.S., now expressly provides that a "trade secret held by an agency" is confidential and exempt from disclosure. An agency may disclose a trade secret to an officer or employee of another agency or government entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities. Section 119.0715(3), F.S.

The term "trade secret" has the same meaning as in s. 688.002, F.S. Section 119.0715(1), F.S. Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The trial court's conclusion as to whether specific information constitutes a trade secret "rests on factual determinations that are assailable on appeal only if unsupported by competent, substantial evidence." *Sepro*, 839 So. 2d at 785. *Cf. Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, at 286 So. 3d at 859 (appellate court's role is to strictly construe the statutory definition of trade secret, and determine if competent, substantial evidence exists to support the factual findings of the trial court; the trial court's interpretation of a statute and its application of the law to facts are subject to de novo review); *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017) (trial court's conclusion that insurance policy statistics submitted to the Office of Insurance Regulation had "independent economic value" within the meaning of the statutory definition of trade secret in

s. 688.002(4), F.S., was supported by competent, substantial evidence). *Cf. Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court's finding that identities of investors and partners listed in applications to dispense medical cannabis were not trade secrets because the applicants "did not prove" that this information constituted a trade secret). *And see Barfield v. Florida Department of Health*, No. 2015 CA 003014 (Fla. 2d Cir. Ct. October 27, 2017), available online in the Cases database at the open government site at myfloridalegal.com (identity of consultants and related information contained in application to dispense medical cannabis qualified as a trade secret).

Similarly, the Fourth District upheld the trial court's determination, after an in camera inspection, that the aggregate number of airport pick-ups by a transportation service company and the sums of money paid to the county pursuant to a license agreement between the company and the county did not constitute trade secret information. *Rasier-DC, LLC v. B & L Service, Inc.*, 237 So. 3d 374 (Fla. 4th DCA 2018). The court also found that a provision in the agreement requiring that the county maintain the confidentiality of the company's trade secret information and assert the exempt status in response to a public records request could not transform the information into a confidential record, citing to *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1208 (Fla. 1st DCA 2009). *And see James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A., v. Rodale, Inc.*, 41 So. 3d 386, 389 (Fla. 1st DCA 2010), rejecting a company's claim that information in customer complaints and company responses were trade secrets; noting that such information "is not secret and is not [the company's] to control;"*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). *Cf.* Inf. Op. to Brown, March 11, 2016 (if an agency has received material that the sender has identified as "trade secret" and the material does not appear to meet the statutory definition of trade secret, the agency should advise the sender "that it has a received a public request and will release the records and allow the sender to seek a protective order for those materials")

In addition to the general trade secret exemption in s. 119.0715, there are also specific trade secret exemptions. *See, e.g.*, s. 570.544(8), 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). *Cf.* AGO 09-02 (s. 581.199, F.S., prohibits authorized representatives of Division of Plant Industry in Department of Agriculture and Consumer Services from disclosing trade secrets obtained in carrying out their duties under Ch. 581 to any unauthorized person, provided such trade secrets fall within the statutory definition in s. 812.081, F.S., and owner of the trade secrets has taken measures to maintain the information's secrecy). More information about these exemptions may be found in the summaries located in Appendix D.

b. Proprietary confidential business information

While there is no generic exemption for information claimed to be "proprietary confidential business information," the Legislature has created a number of exemptions from Ch. 119, F.S., for proprietary confidential business information held by certain agencies. The term is generally defined by the statute creating the exemption and frequently includes trade secrets. *See, e.g.,* s. 288.075, F.S. (economic development agency); s. 288.9626, F.S. (Florida Opportunity Fund); and 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"). *And see* AGO 08-14 (lease payment amount made by a private company to the city does not constitute "proprietary confidential business information").

D. PROVIDING PUBLIC RECORDS

1. Validity of agency conditions on access

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.

The term "reasonable conditions" as used in s. 119.07(1)(a), F.S., "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 Chandler v. City of Greenacres,* 140 So. 3d 1080, 1084 (Fla. 4th DCA 2014) (noting the narrow interpretation of the phrase "reasonable conditions"); 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).

Accordingly, the "reasonable conditions" do not include a rule or condition of inspection which operates to restrict or circumvent a person's right of access. AGO 75-50. "The courts of this state have invalidated measures which seek to impose any additional burden on those seeking to exercise their rights to obtain records" under Ch. 119, F.S. Inf. Op. to Cook, May 27, 2011. *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 Public Records Act "embodies important public policy" and "is designed to provide citizens with a simple and expeditious method of accessing public records." *Orange County v. Hewlings,* 152 So. 3d 812, 817 (Fla. 5th DCA 2014). Thus, an agency violated the Act when instead of complying with Hewlings' "simple request" for records, it "chose to interpose the additional bureaucratic hurdles of forcing her to come to its offices, comb through the records, mark the records in a certain manner, wait for a written estimate of costs, then, after paying the costs, wait again for the records to be mailed to her." *Id.*

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). *And see* Inf. Op. to Cook, May 27, 2011, noting that "[a] policy requiring a physical address for mailing copies of requested public records or the personal appearance of the requestor would not appear to relate to the custodian's duty to protect public records

from alteration or destruction, but to impose additional constraints on the requestor." *Compare Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018) (state attorney did not violate the Public Records Act by making requested records available for inspection and copying at the main office of the state attorney, rather than at a branch office closer to the requester's home, because the Public Records Act "does not require government officials to move records from where they are being maintained to a different place convenient to the requester").

Moreover, 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). *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). *Cf. Herbits v. City of Miami*, 207 So. 3d 274, 275 (Fla. 3d DCA 2016) (claim based on alleged concealment of information in violation of transparency mandates established in local enactments is preempted by the Florida Public Records Act, because the "Florida Legislature has so pervasively legislated regarding this subject area that a local government is precluded from legislating in the same area.").

2. Individuals 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), available online in the Cases database at the open government site at myfloridalegal.com.

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), available online in the Cases database at the open government site at myfloridalegal.com. "[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), available online in the Cases database at the open government site at myfloridalegal.com.

"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), available online in the Cases database at the open government site at myfloridalegal.com. *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 stalking law "because the right to obtain the records is established by statute and acknowledged in the state constitution"). *Cf. James v. Loxahatchee Groves Water Control District,* 820 So. 2d 988 (Fla. 4th DCA 2002), concluding that 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. 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 requester, 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.*

3. Purpose of request

The requester is not required to explain the purpose or reason for a public records request. "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 Barfield v. School Board of Manatee County,* 135 So. 3d 560, 562 (Fla. 2d DCA 2014) ("An individual's reason for requesting a public record is irrelevant"); *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"). *Cf. Town of Gulf Stream v. O'Boyle,* 654 F. App'x 439 (11th Cir. 2016) (alleged filing of large numbers of frivolous public records requests which are then followed by lawsuits when the requests are not addressed does not constitute a predicate act under the Racketeer Influenced Corrupt Organizations Act), and *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019) ("In short, a citizen's public records requests and lawsuits against the government can clearly constitute protected First Amendment activity").

Thus, an agency is not authorized to impose conditions or limit access to public records based on a suspicion that the request may be for an improper purpose. Inf. Op. to Cook, May 27, 2011. However, as noted in that opinion, Florida Statutes impose criminal penalties for the unauthorized use of personal identification information for fraudulent or harassment purposes and for the criminal use of a public record or public records information. *See* ss. 817.568 and 817.569, F.S.

Similarly, "the 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").

4. Role of the records custodian

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."

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. *And see* s. 119.0701(2), F.S. (discussed more fully on pages 65-66) requiring that certain agency contracts for public services must contain contact information pertaining to the agency's custodian of public records.

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.*

In *Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018), the court rejected the requester's claim that he was entitled to view the records at the office of an assistant state attorney in Lake City when office policy required that the records be sent to the state attorney's main office in Live Oak to be reviewed for exemptions. The court reasoned that the assistant state attorney "couldn't have, for instance simply handed over the records on the spot" when the requester asked for them in Lake City because both the "[Public Records] Act and office policy" required that the records "be reviewed for exempt information by the public records custodian (who was also responsible for supervising the record inspection and copying process)" as provided in s. 119.07(1)(a), F.S. *Id*. at 74

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. *See Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 128 (Fla. 2016), noting that the "good faith language" was intended "to strengthen the responsibilities of records custodians by imposing an explicit requirement on public agencies that they act in good faith in responding to public records requests."

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. SDE Media LLC v. City of Doral*, 25 F.L.W. Supp 243a (Fla. 11th Cir. Ct. May 5, 2017) in which the circuit judge found that the city had violated the Public Records Law by "misrepresenting to SDE Media LLC that all responsive records had been located and produced when, in fact, [the city] knew that a good faith search had not been made and that additional responsive records may not have been produced". *And see Raydient LLC v. Nassau County, Florida*, No. 2019-CA-000054 (Fla. 4th Cir. Ct. August 24, 2021), available online in the Cases database at the open government site at myfloridalegal.com ("If public agency employees and officials transact public business on their privately-owned accounts or devices, then the agency has an affirmative duty in response to public records requests to do what is reasonably necessary to promptly retrieve any public documents from those employees or officials").

The duty of "good faith" imposed on public officers who are charged with the responsibility of complying with the law is "subjective." *Consumer Rights, LLC v. Union County,* 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied,* 177 So. 3d 1264 (Fla. 2015). "Whether a governmental entity acted in 'good faith' in the manner in which it responded to a request for disclosure of public records is necessarily a question for the court to decide based on the circumstances of a case." *Id. Cf. Jackson v. City of South Bay,* 358 So. 3d 18 (Fla. 4th DCA 2023), noting that the Sunshine Law, "unlike the Public Records Act, does not have a good faith exception."

Sections 119.12(1)(b) and (2), F.S mandate that the complainant in a public records lawsuit must provide written notice identifying the public records request to the custodian of public records at least 5 business days prior to filing a civil action. However, the notice is not required if the agency fails to prominently post the contact information for the custodian in the manner prescribed in the statute. *Cf. City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799, n.2 (Fla. 2d DCA 2021), in which the court noted that "[a]lthough there appears to be

no prohibition against using the [Public Records]Act as a discovery device, thereby circumventing the rules of procedure regarding discovery, this does not provide an attorney who represents a party in pending litigation with carte blanche to directly contact a represented opposing party. *See* R. Regulating Fla. Bar 4-42; Fla. Bar Ethics Opinion 09-1 (concluding that a lawyer may not communicate with government officers, directors, or employees who are directly involved or whose acts can be imputed to the government entity in a represented matter)." Questions relating to the application of the Rules of Professional Conduct should be addressed to The Florida Bar.

5. Requests for copies versus requests to inspect public records

"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"); and *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).

6. Records maintained by more than one agency

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. Records not in physical possession of agency

An agency is not authorized to refuse to allow inspection of public records it made or received in the course of official business on the grounds that the documents are in the actual possession of another 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 AGO 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). "Given the aggressive nature of the public's right to inspect and duplicate public records, a governmental agency may not avoid a public records request by transferring custody of its records to another agency." *Chandler v. City of Sanford,* 121 So. 3d 657, 660 (Fla. 5th DCA 2013).

Thus, in *Barfield v. Florida Department of Law Enforcement,* No. 93-1701 (Fla. 2d Cir. Ct. May 19, 1994), available online in the Cases database at the open government site at myfloridalegal.com, 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. 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); and 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).

8. "Overbroad" public records requests

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 records 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. *See* AGO 92-38.

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), available online in the Cases database at the open government site at myfloridalegalcom, stating that if a public records request is insufficient to identify the records sought, the city has an affirmative duty to promptly notify the requester 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).

9. Written request or form requirements

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. "In sum, the city could not properly condition disclosure of the public records, to the then-anonymous requester on filling out the city's form . . . ." *Chandler v. City of Greenacres,* 140 So. 3d 1080, 1085 (Fla. 4th DCA 2014).

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 requester'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(m)(1), Fla. R. Gen. Prac. & 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).

10. Identification of requester

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. *Accord* Inf. Op. to Cook, May 27, 2011. *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. 1012.31(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.

Thus, a city may not require an anonymous requester who made a public records request via e-mail to provide an "address or other identifiable source for payment of the associated costs." *Chandler v. City of Greenacres,* 140 So. 3d 1080, 1085 (Fla. 4th DCA 2014). Instead, "the city could have sent an estimate of costs through e-mail to the requester just as it could through regular mail, had the request been made via paper by an anonymous requester." *Id. Cf. Consumer Rights, LLC v. Union County, Florida,* 159 So. 3d 882, 886 (Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015) ("We know of no law that requires a governmental entity to provide public records to a generic email address, at least not until such time as it is made clear that the address belongs to a person"); and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.,* 195 So. 3d 396, 402 (Fla. 4th DCA 2016) ("There is a difference between allowing anonymous public records requests and evaluating an agency's response when such requests are justifiably handled with caution").

11. 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." *And see* s. 119.01(2)(e), F.S. Thus, an agency is authorized but not required to permit remote electronic access to public records.

Similarly, access to public records by remote electronic means is merely an additional means of inspecting or copying public records; this "additional means of access, however, is insufficient where the person requesting the records specifies the traditional method of access via paper copies." *Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332, 333 (Fla. 1st DCA 2015).

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.

12. Requests to create new records, answer questions about the records, or reformat existing records

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, agencies are not required to "pore through their own records to answer specific questions." *Bivens v. Tony,* 368 So. 3d 16 (Fla. 4th DCA 2023).

Thus, 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. *And see* AGO 80-57. *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). *See also* AGO 08-29. *Cf.* s. 120.53, F.S., relating to maintenance of final orders by agencies subject to Ch. 120, F.S.

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. *Wootton v. Cook, supra. 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) and *Blackshear v. State,* 115 So. 3d 1093 (Fla. 1st DCA 2013) (clerk is "duty-bound to respond to a request about copying costs for the records sought").

Similarly, as stated in *Seigle v. Barry,* 422 So. 2d 63, 66 (Fla. 4th DCA 1982), *review denied,* 431 So. 2d 988 (Fla. 1983), 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." Accordingly, 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*:

> 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. 422 So. 2d at 65.

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.

13. Records available in more than one medium

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. Section 119.01(2)(f), F.S. *See* AGO 13-07. Accordingly, an agency violated the Public Records Act when it referred the requester to a website instead of providing paper copies as the requester asked. *Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332 (Fla. 1st DCA 2015). *See also* AGO 91-61 (custodian must provide a copy of computer disk in its original format; a typed transcript does not satisfy the requirements of this statute).

Similarly, an agency violated s. 119.01(2)(f), F.S., when it refused to provide electronic records (emails and calendar entries) in a pst. or similar electronic medium, and instead provided all the requested records in PDF format. The court ordered the agency to provide the records in pst. or other electronic medium that allowed the requester to view them in Outlook in the same manner that the agency could view such records in its own system, except for specific emails or calendar entries that required redactions, which could be provided in PDf format. *Bracci v. School Board of Lee County*, No. 20-CA-5205 (Fla. 20th Cir. Ct. January 12, 2021), available online in the Cases database at the open government site at myfloridalegal.com. *See also 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). *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.

14. Amount of time allowed for response to public records requests

a. Duty to acknowledge requests promptly

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. *Cf. Hewlings v. Orange County,* 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly responded to public records request by voicemail and fax is not dispositive of whether county's 45-day delay in *complying* with the request was unjustified for purposes of s. 119.12, F.S., authorizing an award of attorney's fees to a party who succeeds in a civil action

resulting from an unlawful refusal to provide public records).

b. Automatic delay impermissible

A 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). *And see Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332, 333-334 (Fla. 1st DCA 2015) (agency not authorized to automatically delay production by imposing a 24-hour notice requirement).

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), *review denied,* 47 So. 3d 1288 (Fla. 2010) (city may not delay public access to board meeting minutes until after the city commission has approved the minutes).

c. Unjustified delay

The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. However, "delay in making public records available is permissible under very limited circumstances." *Promenade D'Iberville, LLC v. Sundy,* 145 So. 3d 980, 983 (Fla. 1st DCA, 2014). In *Promenade*, the court noted that a records custodian could delay production to determine whether the records exist, s. 119.07[1][c], F.S.; if the custodian believes the some or all of the record is exempt, s. 119.07[1][d]-[e]; or if the requesting party fails to forward the appropriate fees, s. 119.07[4], F.S. Otherwise, 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." *Id.* at 983, citing *Tribune Company v. Cannella,* 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company,* 105 S.Ct. 2315 (1985). Where the delays aren't justified, "the Public Records Act holds officials accountable." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018).

Thus, an agency's unjustified delay in producing public records constitutes an unlawful refusal to provide access to public records. *See Lilker v. Suwannee Valley Transit Authority,* 133 So. 3d 654, 655 (Fla. 1st DCA 2014) ("Unlawful refusal under section 119.12 includes not only affirmative refusal to produce records, but also unjustified delay in producing them"). *See also State v. Webb,* 786 So. 2d 602, 604 (Fla. 1st DCA 2001) (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 "dilatory" response to public records requests).

For example, in *Promenade D'Iberville, LLC v. Sundy, supra,* the appellate court determined that an agency violated the Public Records Act by refusing to provide non-exempt public records until a court denied its motion for a protective order to block the requestor (an adversary in out-of-state litigation) from using the Act. Similarly, a trial judge erred by granting the agency's motion to dismiss on the grounds that the agency ultimately provided the record three months after the request was made and two weeks after the request for mandamus relief had been filed. *Consumer Rights, LLC v. Bradford County, Florida*, 153 So. 3d 394, 398 (Fla. 1st DCA 2014). Instead, the judge should have conducted a hearing to determine whether the delay was justified. *Id.*

By contrast, a trial court judgment finding no violation of the Public Records Act when a canvassing board failed to produce minutes of a March 13, 2020 canvassing board meeting until

several months after an agreed upon deadline was upheld in *Jackson v. City of South Bay,* 358 So. 3d 18 (Fla. 4th DCA 2023). The court found that the board provided several meeting minutes but one meeting was overlooked. Upon discovery, the minutes were immediately provided to the petitioner. Additionally, the judge cited a "busy election" and the ongoing pandemic, as well as the board's good faith response. Accordingly, the delay in production "did not amount to an 'unlawful refusal'; rather the delay was justified under the circumstances of this particular case." *See also 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), available online in the Cases database at the open government site at myfloridalegal.com, 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.

Stated another way, the Public Records Act "demands prompt attention and a reasonable response time, not the quickest-possible response." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018). In *Siegmeister*, the court noted that the agency had not "intentionally or unjustifiably delayed responding" to a public records request because it took two weeks for the response to be delivered to the requester. *Id*. at 74. *Cf. Florida Agency for Health Care Administration v. Zuckerman, Spaeder, LLP*, 221 So. 3d 1260, 1264 (Fla. 1st DCA 2017) (trial court abused its discretion by issuing a writ of mandamus requiring health care agency to produce a large number of public records within 48 hours when the records could not be reviewed for redaction of exempt information within this "compressed time period;" trial court also erred by requiring the agency to produce the records prior to the requester's payment of the agency's invoices associated with production of the records).

Moreover, recent cases have emphasized that in order for a delay to constitute an "unlawful refusal" for purposes of the award of attorney's fees under s. 119.12, F.S., the delay must be "unjustified." *See e.g., Consumer Rights, LLC v. Union County,* 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied,* 177 So. 3d 1264 (Fla. 2015) and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.,* 195 So. 3d 396, 401 (Fla. 4th DCA 2016). *See also* the discussion on pages 198-201 relating to attorney's fees awarded under s. 119.12, F.S., for an "unlawful refusal" to provide access to public records.

d. Arbitrary time for inspection

The Public Records Act authorizes inspection and copying of public records "at any reasonable time." Section 119.07(1)(a), F.S. While the custodian may reasonably restrict inspection to those hours during which his or her office is open to the public, an agency policy that restricts inspection of public records to the hours of 8:30 a.m. to 9:30 a.m., Monday through Friday with 24-hour advance notice violates the Public Records Act. *Lake Shore Hospital Authority v. Lilker,* 168 So. 3d 332 (Fla. 1st DCA 2015). *Accord* AGO 81-12 (custodian not authorized to establish an arbitrary time period during which records may or may not be inspected).

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. Inf. Op. to Riotte, May 21, 1990, concluding that 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.

e. Standing requests for production of future records

The 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 Act 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.

15. Confidentiality agreements

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), available online in the Cases database at the open government site at myfloridalegal.com, (confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act).

Thus, in *National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010), the court held 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." *And see Rasier-DC, LLC v. B & L Service, Inc.*, 237 So. 3d 374 (Fla. 4th DCA 2018) (provision in license agreement between company and county which required county to maintain the confidentiality of company's trade secret information and assert its exempt status in response to a public records request could not transform information found to be a public record into a private record); *City of Pinellas Park, Florida v. Times Publishing Company,* No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001), available online in the Cases database at the open government site at myfloridalegal.com ("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 *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).

Similarly, in *Times Publishing Company v. City of St. Petersburg,* 558 So. 2d 487, 494 (Fla. 2d DCA 1990), the court determined that a baseball organization and a city improperly attempted to circumvent the Public Records Act by agreeing to keep negotiation documents relating to use of a municipal stadium confidential and in the exclusive custody of the organization. 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 organization and the city violated the Public Records Act. *Cf. WPTV-TV v. State,* 61 So. 3d 1191 (Fla. 5th DCA 2011) (trial court may not require media to enter into confidentiality agreement in order to receive advance notice of information relating to jury selection in criminal case).

Additionally, s. 69.081(8), F.S., part of the Sunshine in Litigation Act, provides, subject to limited 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. Settlement records must be maintained in compliance with Ch. 119, F.S. *See* Inf. Op. to Barry, June 24, 1998 (agency not authorized to enter into a settlement agreement authorizing the concealment of information relating to an adverse personnel decision from the remainder of a personnel file). *Cf.* s. 215.425(5), F.S. (any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract).

Moreover, to allow the maker or sender of records to dictate the circumstances under which the records 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. *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); 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).

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.). *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 anonymous sources during its investigation of an 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).

Therefore, unless the Legislature has expressly authorized the maker of records received by an agency to keep the material confidential, the wishes of the sender or the agency 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). *And see Morris v. Whitehead,* 588 So. 2d 1023, 1024 (Fla. 2d DCA 1991) (upholding the nondisclosure of confidential records received by housing authority from the federal government pursuant to agreement authorized by state housing law). *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 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).

16. Redaction of confidential or exempt information

If the custodian asserts that an exemption applies to part of the record, the custodian "shall redact that portion . . . and shall produce the remainder of such record for inspection and copying." Section 119.07(1)(d), F.S. *Ocala Star Banner Corp. v. McGhee,* 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may redact information identifying confidential informant 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. *See also* 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). *Compare Florida Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (trial court order mandating that agency produce a large number of public records within 48 hours "effectively requires AHCA to ignore its statutory duty to redact exempted information"); and *Department of Health v. Rehabilitation Center at Hollywood Hills* 259 So. 3d 979, 982 (Fla. 1st DCA 2018), reversing a lower court order that ordered production of death certificates without addressing the Department's "statutory duty to safeguard confidential and exempt information contained in the requested certificates."

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* AGOs 97-67 and 05-37 (Official Records).

Section 119.011(13), 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).

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).

However, in *City of St. Petersburg v. Romine ex rel. Dillinger,* 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court cautioned 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." Thus, a 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. AGO 06-04. *Compare* AGO 08-33 (list of law enforcement officers who have been placed on administrative duty is a public record; the list is not confidential pursuant to section 112.533[2][a], F.S., providing for confidentiality of complaints filed against a law enforcement officer); and AGO 07-15 (statutory exemption authorizing certain corporations to request confidentiality of information relating to the company's interest or plans to relocate to the state may be cited by a records custodian as statutory authority for withholding information from public disclosure without violating the confidentiality provisions of the exemption).

However, s. 119.07(1)(e), F.S., "requires only record-by-record—not redaction-by-redaction—identification of the exemptions authorizing the redactions in each record." *Jones v. Miami Herald Media Company,* 198 So. 3d 1143 (Fla. 1st DCA 2016). The court upheld the agency's use of a form with checkboxes identifying the various statutory exemptions relied upon for the redactions in the records and rejected the petitioner's contention that the agency should

have specified which exemption applied to which redaction. *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). "The merit of imposing a duty on the Department to identify each document in a record that it asserts to be exempt under the [Public Records] Act—similar to the generation of a privilege log in response to a civil discovery request—is a matter properly addressed to the legislature rather than this court." *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018).

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. *See Lorei v. Smith,* 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied,* 475 So. 2d 695 (Fla. 1985).

17. 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 disclosural 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).

In *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018), the court recognized that a public official's use of a private cell phone to conduct public business via text messaging could create a written public record subject to disclosure. "The purpose of both Article I, section 24 and Chapter 119 is to ensure that citizens may review (and criticize) government actions. That purpose would be defeated if a public official could shield the disclosure of public records by conducting business on a private phone." 257 So. 3d at 1042. The court acknowledged that the public's right to public records "does not extinguish an individual's constitutional and statutory rights in private information." However, the court found that a judicial review of the records could safeguard "all legitimate privacy concerns." *Id.*

18. Liability for disclosure

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 1198 (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).

E. STATUTORY EXEMPTIONS

1. Creation of exemptions

"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). *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). *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." "The Constitution allows for the legislature, not the courts to provide for exceptions to the public records act." *Cruz v. State*, 297 So. 3d 154 (Fla. 4th DCA 2019). *See 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). *Compare 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." *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); and *State, Department of Financial Services v. Danahy & Murray, P.A.*, 246 So. 3d 466 (Fla. 1st DCA 2018) (distinguishing *Halifax* and finding that a statute exempting certain information held by the Department of Financial Services under the

Florida Insurance Code met the constitutional standard in Article I s. 24[c], Fla. Const.).

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, Fla. R. Gen. Prac & 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). Rule 2.420 may be accessed online at www.floridabar.org.

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. *And see* s. 286.0111, F.S. (provisions of s. 119.15 apply to exemptions to s. 286.011, F.S.).

2. Strict construction

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). "Because Florida's public policy favors disclosure, "the Public Records Act is construed liberally in favor of openness, and exemptions from disclosure are construed narrowly and limited to their designated purpose." *City of Miami Beach v. Miami New Times, LLC*, 314 So. 3d 562, 565 (Fla. 3d DCA 2020), quoting from *Rameses, Inc. v. Demings*, 29 So. 3d 418, 421 (Fla. 5th DCA 2010). *See also National Collegiate Athletic Association v. Associated Press,* 18 So. 3d 1201, 1206 (Fla.1st DCA 2009), *review denied,* 37 So. 3d 848 (Fla. 2010); *Krischer v. D'Amato,* 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *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).

An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. *See Barfield v. School Board of Manatee County,* 135 So. 3d 560, 562 (Fla. 2d DCA 2014); *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. Retroactive application of new exemptions

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.* 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. *Baker County Press, Inc. v. Baker County Medical Services,* 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004).

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 Palm Beach County Sheriff's Office v. Sun-Sentinel Company, LLC,* 226 So. 3d 969 (Fla. 4th DCA 2017); *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); AGO 11-16 (applying exemption to a public records request received before the statute's effective date because the legislation creating the exemption states that it "applies to information held by an agency, before, on, or after the effective date of this exemption"); 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. Retroactive application of statutes eliminating confidentiality

In *Baker v. Eckerd Corporation,* 697 So. 2d 970 (Fla. 2d DCA 1997), the court held that an amendment eliminating protection against disclosure of certain records 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. Difference between exempt and confidential records

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). *And see State v. Wooten*, 260 So. 3d 1060, 1069-1070 (Fla. 4th DCA 2018) (Ch. 119, F.S., refers to both "exempt" records and records which are "confidential and exempt").

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 08-24, 04-09 and 86-97. Thus, where a statute provided confidentiality

for all records in the city's risk management claims file, the trial judge lacked authority to order the city to produce certain records based on a determination that their production would not harm the city. *City of Homestead v. McDonough*, 232 So. 3d 1069 (Fla. 4th DCA 2017). *And see City of Miami Beach v. Miami New Times*, 314 So. 3d 562 (Fla. 3d DCA 2020), concluding that confidential draft audit reports relating to towing companies did not become subject to disclosure when the companies (without the knowledge of the agency) disclosed them to a third party.

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). *And see State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205, 214 (Fla. 4th DCA 2018) (when statute authorizes release of confidential security system records upon a showing of "good cause," the Legislature "intended the courts to apply a common law approach to 'good cause,' where meaning emerges over time, on a case-by-case basis, and courts arrive at a desirable equilibrium between the competing needs of disclosure and secrecy of government records"). *Cf. Florida Department of Corrections v. Miami Herald Media Company*, (Fla. 1st DCA 2019) (trial court erred when it found "good cause" for release of confidential prison video footage even though newspaper had admitted at the hearing that it no longer needed the recordings).

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." [Emphasis supplied by the Court] *See also* 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). *Accord* AGO 08-24. *And see* AGO 17-05 (property appraiser authorized to disclose addresses that are exempt from public inspection, but not confidential, to the code inspector for the limited purpose of providing alleged code violators with the statutory notice

required by s. 162.06, F.S.).

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][l], 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. Discovery of exempt or confidential records

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 or in administrative proceedings. *See Department of Health v. Poss,* 45 So. 3d 510 (Fla. 1st DCA 2010); *Department of Professional Regulation v. Spiva,* 478 So. 2d 382 (Fla. 1st DCA 1985). "Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope." *Department of Highway Safety and Motor Vehicles v. Kropff ,* 445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984). *See also 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. League of Women Voters v. Florida House of Representatives,* 132 So. 3d 135, 153 (Fla. 2013) ("if the circuit court concludes, after undertaking an in camera review of any disputed documents, that draft [apportionment] plans are exempt from public records disclosure, the circuit court should still require the Legislature to produce the draft apportionment maps and supporting documents under appropriate litigation discovery rules, to the extent these documents do not contain information regarding individual legislators' or legislative staff members' thoughts or impressions").

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. *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"). *And see Delaurentos v. Peguero*, 47 So. 3d 879 (Fla. 3d DCA 2010 (while the exemption for employee medical information in s. 119.071[4][b] did not preclude the discovery of a police officer's pre-employment psychological evaluation, the estate's request for the evaluation in a wrongful death case filed against the officer and county was, under the circumstances of the case, outside the scope of permissible discovery).

F. FEDERAL LAW AND THE FLORIDA PUBLIC RECORDS LAW

1. Application of federal confidentiality requirements to Florida public records

Generally, records that 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 withheld from a public records request, 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. *See 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); AGOs 90-102 and 74-372. *Compare State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935); AGOs 85-03, 81-101, and 80-31. *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).

Federal confidentiality requirements may be a concern if the Florida governmental entity or officer is acting as an instrumentality or agent of the federal government. In such a case, a federal agency may assert ownership of records and assert federal jurisdiction and protection of such records. *See, e.g., U.S. v. Story County, Iowa*, 28 F. Supp. 3d 861, 872 (S.D. Iowa 2014) (emails of sheriff from his county email account were sent in his capacity of an appointed board member of an independent authority within an agency of the United States Department of Commerce, and were federal records subject to federal jurisdiction since "the subject emails were not 'produced by or originated from' [the sheriff's] role as … Sheriff nor were they held by [the sheriff] in his official capacity as … sheriff."). *Compare Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117 (Fla. 5th DCA 1994) (tenant records of a state public housing authority were not protected under federal law because the federal agency was not involved in the day-to-day operations of the authority).

Records received from a federal agency may have a statutory or regulatory basis for protection. *Morris v. Whitehead*, 588 So. 2d 1023 (Fla. 2d DCA 1991) (holding confidential records received by a state run housing authority from the federal government may not be disclosed where there was a statutorily-authorized agreement between agencies that the state housing authority will maintain the confidentiality of the materials received); *Miami Herald Media Company v. Florida Department of Transportation*, 345 F. Supp. 3d 1349, 1356 (N.D. Fla. 2018) (state agency could not disclose records when federal safety board investigating bridge collapse took control over dissemination of records relating to the investigation, designated the Florida Department of Transportation (FDOT) as a party to assist NTSB in the investigation, and directed the state agency to not disclose the information contained in those records by agreement and as authorized by federal regulation); *but see Lakeland Ledger Publishing Co. v. Sch. Bd. of Polk Co.*, GV-G-91-3803 (Fla. 10th Cir. Ct. Nov. 21, 1991), available online in the Cases database at the open government site at myfloridalegal.com (relying on *Morris v. Whitehead, supra*, to determine a map prepared by the U.S. Justice Department concerning desegregation of Lakeland schools and given to school district employees was a public record and open to inspection).

If litigation ensues with respect to whether the disclosure of a record is subject to federal law, under some circumstances the federal agency may be considered a real party in interest, and

the matter may be removed to federal court. *See e.g., Miami Herald Media Company v. Florida Department of Transportation, supra*, 345 F. Supp. 3d at 1356 (denying a motion to remand case to state court after the United States removed matter to federal district court because the federal agency in the suit was a real party in interest); *compare In re Motion to Compel Compliance to Minnesota Department of Health v. All Temporaries Midwest, Inc,* 423 F. Supp. 3d 670, 678 (D. Minn. 2019) (remanding matter to state court despite assertion of federal agency that it was a real party in interest; subpoenaed records were collected pursuant to state law and a state investigation, and thus subject to state law, notwithstanding a joint investigation by the federal agency.).

Records do not become subject to disclosure merely because they are *not* entitled to federal protection. *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683 (S.D. Fla. 1990) (records provided by the United States Attorney's Office to a criminal defendant were active criminal investigative records in the hands of the Florida governmental entities).

2. Copyrighted records

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 119.084(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).

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), in which the court found that the defendant was entitled to inspect and copy copyrighted operating manual for the radar unit used by the police "pursuant to Florida Constitution, Article I section 24 and/or Defendant's fundamental right to due process of law." The court noted that if the police department declined to make copies, the defendant or his representative should 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 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.

G. FEES FOR INSPECTING AND COPYING PUBLIC RECORDS

1. 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). *See also* 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). *Cf.* AGO 75-50 (the fact that the record sought 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).

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).

In addition, 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. For example, in AGO 00-11, the requested records were described as "original documents that have no recorded or maintained counterparts, such that, by their nature, they would need a heightened degree of protection from alteration or destruction." A determination of whether the nature or volume of the public records requires such extensive assistance must be made on a case-by-case basis; the special service charge may not be routinely imposed. *Id.*

Moreover, 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. *Id. And see Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120 (Fla. 2016) (affirming trial court finding that two conditions—an hourly photocopying fee and an hourly supervisory fee—were imposed in violation of s. 119.07, F.S.).

2. 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 81/2 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. *Cf.* AGO 13-03 (while agency may charge "actual cost of duplication" if it sends public records via e-mail, agency did not identify any actual costs of duplication involved in forwarding copies of electronic mail in lieu of photocopying and "the definition [of actual cost of duplication] does not allow for the imposition of labor costs or associated overhead costs").

3. Special service charge for *extensive* use of clerical or supervisory labor or *extensive* information technology resources

Section 119.07(4)(d), F.S. provides 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, in addition to the actual cost of duplication, a reasonable service charge based on the cost actually incurred by the agency for such extensive use of information technology resources or personnel. 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).

Thus, while an agency may not refuse to allow inspection or copying of public records based upon the amount of records requested or the span of time which is covered by the public records request, if extensive use of information technology resources or clerical or supervisory personnel is needed in order to produce the requested records, the agency may impose a reasonable special service charge that reflects the actual costs incurred for the extensive use of such resources or personnel. *See* AGOs 92-38 and 90-07. *Cf. Trout v. Bucher,* 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections authorized to charge a reasonable fee based on the labor costs "actually incurred" to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S.).

a. Meaning of the term "extensive"

Section 119.07(4)(d), F.S., "does not identify the Legislature's intent as to what may constitute 'extensive use' and provides no definition of that term." AGO 13-03. 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.

In light of the lack of clear direction in the statute as to the meaning of the term "extensive," the Attorney General's Office has suggested that agencies implement the service charge authorization "in a manner that reflects 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." AGO 13-03. In addition, the Attorney General's Office also strongly encourages agencies to adopt a public records procedure that addresses imposition of special service charge. *Id.*

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. And see Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 129 (Fla. 2016), noting that "excessive, unwarranted special service charges deter individuals seeking public records from gaining access to the records to which they are entitled."

b. Meaning of the term "information technology resources"

"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. AGOs 13-03 and 99-41.

c. 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 Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (prior court decisions as well as the language in s. 119.07[4], F.S., dictate that the requester, who had submitted several voluminous public records requests for records which included confidential information "should be required to pay for the cost of searching, review, and redaction of exempted information prior to production").

Accordingly, because "the Public Records Act requires a records custodian to *determine* whether the requested records exist, *locate* the records, and *review* each record to determine if any of those records are exempt from production," the agency may charge the special service charge as authorized under s. 119.07(4)(d), F.S., for the cost to review voluminous requested records for exempt material. *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799 (Fla. 2d DCA 2021). [Emphasis supplied by the court].

d. Calculation of labor cost

In *Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31 (Fla. 2d

DCA 2008), the court approved a county's special service charge pursuant to s. 119.07(4), F.S., 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. *See Trout v. Bucher,* 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections not required to charge the lowest hourly rate of the employee capable of doing the work needed to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S., because s. 119.07[4][d] allows the agency to charge the labor cost of the personnel that is "actually incurred" by the agency where extensive assistance is required).

The term "supervisory assistance" has not been widely interpreted. *See Herskovitz v. Leon County,* No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com, 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), available online in the Cases database at the open government site at myfloridalegal.com, the circuit judge approved a rate based on an agency attorney's salary when the attorney was required to review 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."

e. Reasonable deposit or advance 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) (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.); and *Promenade D'Iberville, LLC v. Sundy* 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (a records custodian may delay production "if the requesting party fails to remit the appropriate fees").

Accordingly, an agency's policy of requiring the payment of a deposit prior to redaction and delivery of hundreds of telephone recordings related to a criminal trial was determined to be "facially reasonable." *Morris Publishing Group, LLC v. State,* 154 So. 3d 528, 534 (Fla. 1st DCA 2015), *review denied,* 163 So. 3d 512 (Fla. 2015). *Accord Board of County Commissioners of Highlands County v. Colby,* 976 So. 2d 31, 37 (Fla. 2d DCA 2008), noting that a "policy of requiring an advance deposit seems prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records." "[T]he reasonableness of a policy and its application — based on the facts in a particular case — guides whether an abuse of discretion is shown." *Morris Publishing Group, LLC* at 534. *And see Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (lower court abused its discretion by ordering the agency to produce a large number of responsive public records within 48 hours of the issuance of the order without requiring advance payment of the agency's invoices associated with production of the records); *City of St. Petersburg v. Dorchester Holdings, LLC,* 331 So. 3d 799 (Fla. 2d DCA 2021) (trial court erred in holding that the City's prepayment request constituted an unlawful interference with requester's right of access to public records). *Compare Miami Dade College v. Nader + Museu I, LLLP*, 47 F.L.W. D1814 (Fla. 3d DCA August 31, 2022) (trial court properly denied agency's requested fees after production based on the agency's failure to provide the requester with an estimate of the anticipated costs to fulfill the public records request or an invoice prior to production, as required by agency policy, nor did the parties agree in advance to the charges).

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). *And see* 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). *Compare, Smith v. State*, 335 So. 3d 795 (Fla. 2d DCA 2022) (Smith's failure to timely pay fees to obtain requested public records does not permit the agency to ban him from ever obtaining records in the future, provided Smith pays the amount owing for the first request).

4. Requests for information regarding costs to obtain public records

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.

In *Miami Dade College v. Nader + Museu I, LLLP*, 47 F.L.W. D1814 (Fla. 3d DCA August 31, 2022), the court affirmed the trial court's refusal to grant an agency's motion to collect fees under s. 119.07(4)(d), F.S., because the agency failed to provide the requester with an estimate or invoice prior to production thereby violating both its own policies and procedures and the language of s. 119.07(4), F.S. *And see* AGO 13-03, in which the Attorney General's Office strongly encouraged agencies to adopt a public records procedure that addresses imposition of special service charge.

5. Requests for free copies of public records

An agency is not precluded from choosing to provide informational copies of public records without charge. AGO 90-81.

However, 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); *Bennett v. Clerk of Circuit Court Citrus County,* 150 So. 3d 277 (Fla. 5th DCA 2014) (authority providing indigent criminal defendants with free copies does not extend beyond the direct appeal of judgment and sentence and transcripts of evidentiary hearings held on postconviction claims); *Milner v. State*, 196 So. 3d 569 (Fla. 4th DCA 2016) (indigent prisoners are not entitled to free copies of records under the Public Records Act); 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). *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). *Cf. Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018) (Public Records Act does not require government officials to move records from where they are being maintained to a different place convenient to the requester, citing to *Roesch v. State*).

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* Inf. Op. to Garganese, April 14, 1998 (authority to charge city council member for copies of public records).

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 20, 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.).

6. Authority to charge for development, travel or overhead 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 to obtain public records stored off-premises. AGO 90-07. For example, if municipal pension records are stored in a records storage facility outside city limits, the city may not pass along to the public records requester the costs to retrieve the records. Inf. Op. to Sugarman, September 5, 1997. *Cf. Cone & Graham, Inc. v. State,* No. 97-4047 (Fla. 2d Cir. Ct. October 7, 1997), available online in the Cases database at the open government site at myfloridalegal.com (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 requester must bear the costs for retrieving the records).

An agency may not 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. Fees to obtain agency records held by private companies

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. Accord* AGO 13-03. *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). *Cf.* s. 119.0701(2)(b)2., F.S., requiring that certain contracts contain a provision stipulating that upon request from the public agency's custodian of public records, the contractor must provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in ch. 119 or as otherwise provided by law.

8. Sales tax

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. Confidential records

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. Requester makes his/her own copies

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. *Cf. Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 122 (Fla. 2016) (affirming trial court finding that two conditions—"an hourly photocopying fee and an hourly supervisory fee"—were imposed in violation of s. 119.07, F.S.).

11. 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. Gen. Prac. & Jud. Admin. 2.420, Public Access to and Protection of Judicial Records. *Id. See* Fla. R. Gen Prac. & 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 General Practice and Judicial Administration 2.420(m)(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. *And see* s. 28.222(7), F.S., providing that the Official Records are open to the public, but the clerk is not required to perform any service in connection with the making of copies without payment of service charges as provided in s. 28.24, F.S. *Cf. WFTV, Inc. v. Wilken,* 675 So. 2d 674 (Fla. 4th DCA 1996).

b. Department of Highway Safety and Motor Vehicles crash reports

In the absence of statutory provision, the charges authorized in s. 119.07(4), F.S., govern the fees to obtain copies of crash reports from law enforcement agencies. 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)(d), F.S.

H. REMEDIES AND PENALTIES

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: www.myfloridalegal.com.

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. *Cf.* s. 119.07(8), 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).

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). *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).

The service of process requirements in s. 48.111, F.S., apply to civil actions to enforce the public records law. *See Department of Children and Families v. Panno*, 312 So. 3d 1275 (Fla. 2d DCA 2021), interpreting the service of process requirements found in a prior version of s. 48.111.

(1) Mandamus

Mandamus is an appropriate remedy to enforce compliance with the Public Records Act. *See Chandler v. City of Greenacres,* 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014); *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). *See also Farmer v. State,* 927 So. 2d 1075 (Fla. 2d DCA 2006) (trial court should treat motion to compel production of public records as petition for writ of mandamus); *Major v. Hallandale Beach Police Department*, 219 So. 3d 856 (Fla. 4th DCA 2017) (petition for writ of mandamus filed against a governmental agency must attach a copy of any record that supports the petition). *Cf. Wilkinson v. State Attorney's Office*, 345 So. 3d 925 (Fla. 3d DCA 2022) (mandamus is an extraordinary remedy that appellate court will not entertain since petitioner has an adequate alternative remedy to enforce Ch. 119); and *City of Pembroke Pines v. Town of Southwest Ranches,* 362 So. 3d 223 (Fla. 4th DCA 2023) (trial court properly dismissed city's public records lawsuit against another municipality because the city had not exhausted the dispute resolution procedures in Ch. 164, F.S.).

A petition for writ of mandamus is an appropriate vehicle to challenge the denial of a public records request, even where an exemption has been asserted. *Deeson Media, LLC v. City of Tampa*, 291 So. 3d 974 (Fla. 2d DCA 2019). *Cf. Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (mandamus relief ordering agency to produce records within 48 hours and prior to requester's payment of invoices or agency's opportunity to review and redact exempt material was improper because agency's duty was not "ministerial" and requester's right to the records was not "indisputable").

If the requester'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*, 597 So. 2d 940 (Fla. 1st DCA 1992). *Accord Gay v. State,* 697 So. 2d 179 (Fla. 1st DCA 1997). *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 an alternative writ of mandamus requiring the clerk and court reporter to show cause why the writ should not be issued, and because there was no sworn evidence refuting the petitioner's allegations). *Compare Scott v. Lee County School Board*, 310 So. 3d 163 (Fla. 2d DCA 2021) (trial court properly dismissed facially insufficient petition that did not attach the requester's public records request); and *Stern v. City of Miami Beach,* 359 So. 3d 1209 (Fla. 3d DCA 2023) (trial court did not err by dismissing Stern's public records complaint without first issuing an alternative writ of mandamus; Stern repeatedly refused to proceed in several prior scheduled hearings and the issuance of an alternative writ "would have been an exercise in futility").

Thus, a petition for writ of mandamus should not have been dismissed based on the agency's response that the requested records "would have been destroyed" in accordance with agency policy. *Brown v. State,* 152 So. 3d 739, 741 (Fla. 4th DCA 2014). Similarly, the trial judge erred in dismissing a petition seeking records relating to the chain of custody for a weapon without issuing an alternative writ of mandamus. *Tracy v. State*, 219 So. 3d 958 (Fla. 1st DCA 2017). The agency had produced an evidence card showing that the weapon in question had been destroyed; accordingly, the trial court concluded that dismissal was appropriate as there were no records to produce. However, because the petitioner contended that additional records were available, the appellate court found that "factual disputes remain." On remand, "if the [agency] fails to provide sworn evidence that all available information has been provided, the trial court must conduct an evidentiary hearing on the issue prior to denying the claim." *Compare Miller v. State,* 363 So. 3d 1171 (Fla. 6th DCA 2023) (trial court did not abuse its discretion in denying Miller's 'Motion for Postconviction Relief to Enforce Provisions of Florida's Public Records Law' because Miller "did not sufficiently allege the bases for his dispute with the State's assertion that no records existed").

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. See also Stone v. Ward,* 752 So. 2d 100, 101 (Fla. 2d DCA 2000) ("It is well-settled that mandamus is not appropriate to control or regulate a general course of conduct for an unspecified period of time"). *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). However, an injunction is not appropriate if the acts complained of have already been committed and there is not a well-grounded probability of similar future conduct. *Id. See Promenade D'Iberville, LLC v. Sundy,* 145 So. 3d 980, 984 (Fla. 1st DCA 2014).

(3) Declaratory relief sought by agencies

Historically, some agencies would seek guidance from the court by filing an action for declaratory relief rather than comply with a pending public records request or asserting an exemption. *See, e.g.*, *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011) ("Michael Butler appeals from a final judgment in a declaratory action filed by The City of Hallandale Beach [the City] . . . which sought a declaration that a list of recipients of a personal email . . . was not sent in connection with the discharge of any municipal duty and therefore, is not a public record under Florida's Public Records Law"). *Cf. 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).

However, s. 119.07(9), F.S., now reads: "After receiving a request to inspect or copy a record, an agency may not respond to that request by filing an action for declaratory relief against the requester to determine whether the record is a public record as defined by s. 119.011, or the status of the record as confidential or exempt from the provisions of s. 119.07(1)," F.S.

(4) Damages

Section 119.12, F.S. does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of Ch. 119, F.S. Section 119.12(4), F.S. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of Ch. 119, F.S. *Id.*

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

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 Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee,* 189 So. 3d 120, 124 (Fla. 2016), in which the Court observed that "an accelerated civil action plays a critical role in the enforcement of the Public Records Act as is reflected in the title of section 119.11— 'Accelerated hearing; immediate compliance.'" *See also Matos v. Office of the State Attorney for the 17th Judicial Circuit,* 80 So. 3d 1149 (Fla. 4th DCA 2012) (an "immediate hearing does not mean one scheduled within a reasonable time, but means what the statute says: immediate"); and *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).

The purpose of the hearing "is to allow the court to hear argument from the parties and resolve any dispute as to whether there are public records responsive to the request and whether an exemption from disclosure applies in whole or in part to the requested records." *Kline v. University of Florida*, 200 So. 3d 271 (Fla. 1st DCA 2016). For example, an order dismissing a public records complaint filed against a sheriff was overturned on appeal 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). *And see Rogers v. State*, 271 So. 3d 79, 80 (Fla. 3d DCA 2019) (hearing required where "there remains a disputed factual issue as to whether the State possesses the requested records"); *Ferrier v. Public Defender's Office, Second Judicial Circuit of Florida*, 171 So. 3d 744 (Fla. 1st DCA 2015) (circuit court erred in not conducting an evidentiary hearing "on the contested issue of whether [the agency] had the requested materials in its possession"); and *Holley v. Bradford County Sheriff's Department*, 171 So. 3d 805 (Fla. 1st DCA 2015) (because petitioner disputed the agency's "unsworn claim that it did not possess the requested records, the trial court could not deny [the] petition without conducting an evidentiary hearing on this issue"). The failure to hold a hearing may be remedied by a petition for writ of certiorari. *See Martinez v. State,* 969 So. 2d 1174, 1174-75 (Fla. 5th DCA 2007). *Cf. Paylan v. Office of the State Attorney*, 310 So. 3d 459 (Fla. 2d DCA 2020) (petitioner was denied due process when the judge issued an order scheduling a case management conference and then conducted an evidentiary hearing on the petition; the order did not give the petitioner notice that the judge would actually conduct a final evidentiary hearing and decide the petition on the merits.)

"A motion to dismiss tests the legal sufficiency of a complaint and does not resolve factual issues." *Clay County Education Association v. Clay County School Board,* 144 So. 3d 708, 709 (Fla. 1st DCA 2014). Therefore, the trial judge erred when he granted the agency's motion to dismiss based on the agency's "unsworn response . . . that it either had already provided the documents, did not have the information in the format requested, or could not produce the documents because they did not exist." *Id.* The appellate court remanded the case "for an immediate hearing under section 119.11[1] and, if necessary, further proceedings to resolve any factual disputes that remain between the parties' complaint and answer." *Id.*

Thus, "resolution of such disputed issues as notice and compliance must be litigated in an evidentiary setting." *Human Rights Defense Center v. Armor Correctional Health Services, Inc*., 336 So. 3d 769 (Fla. 3d DCA 2021). *See also McDonough v. City of Homestead*, 305 So. 3d 316 (Fla. 3d DCA 2020) (absent waiver, an order denying mandamus relief without a hearing is premature); *Williams v. State,* 163 So. 3d 618 (Fla. 4th DCA 2015) (where petitioner asserted that the record produced by the agency was not the record he requested, trial judge erred by denying prison inmate's petition for writ of mandamus without issuing an alternative writ to show cause and failing to hold an evidentiary hearing to resolve disputed issues of fact). *Cf. Morgan v. Wagner,* 73 So. 3d 815 (Fla. 4th DCA 2011), in which the Fourth District said it was "compelled to affirm" the lower court order dismissing the petitioner's public records action because there was no transcript or documentation in the appendix to show that petitioner had preserved "what may have been a valid procedural argument."

(3) In camera inspection

Section 119.07(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 exemption now found at s. 119.071[2][f], F.S., is asserted); *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); and *Environmental Turf, Inc. v. University of Florida Board of Trustees,* 83 So. 3d 1012 (Fla. 1st DCA 2012) (in camera inspection required where university claimed that records were exempt pursuant to s. 119.071[1][d], F.S. [attorney work product] and s. 1004.22, F.S. [proprietary research records]). *And see Weeks v. Golden,* 764 So. 2d 633 (Fla. 1st DCA 2009) ("We fail to see how the trial court can [determine whether an agency is entitled to a claimed exemption] without examining the records"). *Cf. Agrosource, Inc. v. Florida Department of Citrus,* 148 So. 3d 138 (Fla. 2d DCA 2014) (trial court finding after in camera review that certain prelitigation emails were exempt attorney work product was supported by competent substantial evidence).

An in camera inspection is also required so that the trial judge can determine whether the records can be redacted to remove exempt information. *See Holley v. Bradford County Sheriff's Department,* 171 So. 3d 805 (Fla. 1st DCA 2015) (trial court must conduct an in camera inspection of the records to determine whether they could be redacted to remove information identifying confidential informants); and *Gonzalez v. State*, 240 So. 3d 99 (Fla. 2d DCA 2018) (in the absence of an in camera inspection of the requested CDs, the circuit court could not conclude that their contents are exempt from disclosure under s. 119.071[3][a][2] or former s. 281.301; nor could it determine whether redaction was possible). *Cf. Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612 (Fla. 1st DCA 2018) (reversing trial judge order which found prospective information relating to Governor's detailed schedule and travel plans to be public even though the judge did not inspect the records and despite special agent's undisputed affidavit that premature disclosure of such information would reveal state law enforcement agency's "surveillance techniques, procedures, and personnel" made exempt under s. 119.071(2)(d), F.S., and jeopardize the security of the Governor and the agents who protect him). *And see City of Miami v. Blanco*, 336 So. 3d 1268 (Fla. 3d DCA 2022) (trial court departed from essential requirements of law by failing to conduct in camera review before granting defendant's motion to compel and/or for a subpoena for video camera recordings taken at police station following his arrest; without an in camera inspection, the judge could not determine whether the video recordings fell within the security plan exemptions in s. 119.071(3)(a) and former s. 281.301, F.S.)

Similarly, the Fourth District held that "it is fundamental error" for a trial court to decide whether a statutory exemption from disclosure for mediation communications required that such communications be redacted from the otherwise public transcript of a closed attorney client session without conducting an in camera hearing to assess whether the redactions were appropriately applied. *Everglades Law Center v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019). The appellate court also observed that the trial court was "led astray by the parties' agreement that an in camera review of the transcript was not needed." *Id.*

While s. 119.07(1)(g), F.S., states that an in camera inspection is "discretionary" in cases where an exemption is alleged under s. 119.071(2)(c), F.S. (the exemption for active criminal investigative or intelligence information), it has been held that an in camera inspection is necessary in order for the court to determine whether the exemption applies to the records at issue. For example, 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 noted that the state attorney had not presented "evidence to meet its burden that the records are exempt" under s. 119.071(2)(c), F.S.; therefore, an "in camera inspection by the lower court is . . . required so that the trial judge will have a factual basis to decide if the records are exempt. . . ." *See also Garrison v. Bailey,* 4 So. 3d 683 (Fla. 1st DCA 2009). *Compare Althouse v. Palm Beach County Sheriff's Office,* 89 So. 3d 288, 289 (Fla. 4th DCA 2012) (while trial court's failure to conduct an in camera inspection usually constitutes reversible error, in this case petitioner objected to an inspection and thereby precluded judge from conducting "an intelligent review of the documents;" accordingly, appellate court was "compelled to affirm" trial court's denial of a petition seeking documents relating to a pending criminal investigation).

Similarly, if a public records request involves electronic information stored on privately-owned devices, an agency's reasons for its lack of disclosure, "whether for reasons related to relevancy, the application of possible privileges, or otherwise, necessitates a judicial review of the available communications to identify those which are subject to disclosure and any defenses to allegations of noncompliance." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1042 (Fla. 4th DCA 2018).

(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"); *Grapski v. City of Alachua,* 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied,* 47 So. 3d 1288 (Fla. 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."); and S*chweickert v. Citrus County, Florida Board*, 193 So. 3d 1075, 1079 (Fla. 5th DCA 2016) ("We agree that Appellant's case was not rendered moot simply because the Board produced the requested documents after the filing of the initial complaint but prior to filing the amended complaint"). *Accord O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1043 (Fla. 4th DCA 2018) (public records case did not become moot after the town provided unredacted records prior to the hearing, because there were collateral issues "yet to be decided by the trial court—specifically a determination whether the Town's initial redactions . . . were proper and whether any reasonable attorney's fees, costs, and expenses, should be awarded"). *Compare, State v. Ingram,* 170 So. 3d 727 (Fla. 2015) (opinion of district court of appeal holding that prison inmate was entitled to unredacted version of videotaped statement of minor victim vacated following State's uncontested representation at oral argument before the Supreme Court that the videotape does not exist).

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 pendent 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). *Cf. City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022) (party seeking disclosure in public records litigation in which a stay has been granted ordinarily does not have possession of the challenged documents unless and until it has been determined, with finality, that the documents are subject to disclosure).

(6) Venue

The general rule is that a lawsuit against the state or an agency of the state is proper only in the county in which the defendant maintains its principal headquarters. *Florida Department of Children and Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1286 (Fla. 2004). However, there is an exemption to the "home venue privilege" for Ch. 119 actions that involve access to confidential

records and a good cause petition is filed to access those records. *Id. Cf. Scott v. Thompson*, 326 So. 3d 123 (Fla. 1st DCA, 2021), finding that elections supervisors in eight Florida counties were entitled to exercise the home venue privilege in litigation filed against them seeking to order the supervisors to retain digital copies of paper ballots, and distinguishing *Florida Department of Children and Families v. Sun-Sentinel Inc.*, because the lawsuit against the Department of Children and Families involved access to confidential records that could not be made public without a determination of good cause, whereas the suit against the supervisors did not.

c. Attorney fees and costs

Section 119.12, F.S., provides authority for an award of reasonable costs of enforcement, including reasonable attorney fees, in civil actions filed to enforce the provisions of the Public Records Act, provided that certain conditions are met. *Cf. Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, 268 So. 3d 856, 862 (Fla. 1st DCA 2019)(s. 119.12 does not provide authority to award attorney's fees to a third party intervenor in a case where the litigation involved a request for a declaratory judgment to determine whether portions of bid documents constituted trade secrets); *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). *See also O'Boyle v. Town of Gulf Stream*, 341 So. 3d 335 (Fla. 4th DCA 2022) 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 attorney's fees for litigating the amount of fee provided by that statute). *Cf.* AGO 16-16 (hospital district not authorized to reimburse an individual *board member's* attorney fees incurred by her in responding to a public records request pertaining to her board service when no suit, claim, charge, or action has been instituted against the commissioner during the time the attorney fees were incurred).

A successful pro se litigant may recover 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) (awarding costs associated with postage, envelopes and copying, as well as filing and service of process fees, incurred by inmate who prevailed in public records lawsuit). *Accord Yasir v. Forman,* 149 So. 3d 107 (Fla. 4th DCA 2014).

Section 119.12(1), F.S., provides that, if a civil action is filed against an agency to enforce the provisions of this chapter the court shall assess and award the reasonable costs of enforcement including reasonable attorney fees against the responsible agency if the court determines that the agency unlawfully refused to permit a public record to be inspected or copied and the complainant provided written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the civil action. *See Roldan v. City of Hallandale Beach,* 331 So. 3d 348 (Fla. 4th DCA 2023) (s. 119.12(1) requires a separate written notice identifying the public record request before filing a public records lawsuit; a written public records request to the agency custodian is not sufficient).

However, notice is not required if the agency fails to prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website. Section 119.12(2), F.S.

The court must also determine whether the complainant made the public records request or participated in the civil action for an improper purpose. Section 119.12(3), F.S. If the court determines that there was an improper purpose, the court may not award attorney fees or the costs of enforcement, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. *Id.* The term "improper purpose" means "a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this

chapter or for a frivolous purpose." *Id.*

Section 119.12, F.S., is designed to encourage voluntarily compliance with the requirements of Ch. 119, F.S. "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." *New York Times Company v. PHH Mental Health Services, Inc.,* 616 So. 2d 27, 29 (Fla. 1993). Stated another way, the statute "has the dual role of both deterring agencies from wrongfully denying access to public records and encouraging individuals to continue pursuing their right to access public records." *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 125 (Fla. 2016). There is no additional requirement that the court find that the "public agency did not act in good faith, acted in bad faith or acted unreasonably." *Lee*, 189 So. 3d at 122.

However, as noted previously, s. 119.12, F.S., specifies other conditions which must be met prior to an award of fees and costs under this statute. *And see State, Department of Economic Opportunity v. Consumer Rights, LLC*, 181 So. 3d 1239 (Fla. 1st DCA 2015), rejecting appellee's argument that the requirements in s. 284.30, F.S. (establishing procedures to be followed by those seeking to have attorney's fees paid by the state or any of its agencies) are inapplicable to public records cases. *Cf. Woliner v. State*, 320 So. 3d 774 (Fla. 4th DCA 2021) (notice requirement in s. 284.30, F.S., does not preclude the prevailing party in a public records action from obtaining costs).

An "unlawful refusal" for purposes of s. 119.12 may include unlawful conditions or requirements imposed by an agency for obtaining public records. As the Supreme Court explained in *Lee*: "Unlawful conditions or excessive, unwarranted special service charges deter individuals seeking public records from gaining access to the records to which they are entitled . . . Even if not malicious or done in bad faith, the Pension Fund's actions—which were found be unlawful--had the effect of frustrating Lee's constitutional right to access public records and required him to turn to the courts to vindicate that right." *Lee*, 189 So. 3d at 129-130. *Cf. B & L Service, Inc. v. Broward County*, 300 So. 3d 1205 (Fla. 4th DCA 2020) (trial court did not err in refusing to award attorney's fees, because petitioner waived issue of whether county unlawfully refused its public records request by failing to cross-appeal the trial court's initial ruling that the county had not violated the public records law, even though the trial court subsequently modified its prior order by granting the petitioner's motion for rehearing in part).

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). *See also Mazer v. Orange County,* 811 So. 2d 857, 860 (Fla. 5th DCA 2002) ("[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.); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 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); *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 984 (Fla. 1st DCA 2014) ") (an agency's "production of the records on the eve of the enforcement hearing did not cure its unjustified delay"); and *Schweickert v. Citrus County, Florida Board*, 193 So. 3d 1075, 1080 (Fla. 5th DCA 2016) (county's failure to produce a complaint alleging inappropriate conduct by a county commissioner until litigation was filed was an unlawful refusal because the exemption for records relating to an investigation of alleged discrimination did not apply to the complaint; court rejected the county's argument that the delay was justified because the investigation into the complaint might have ultimately produced records which related to discriminatory behavior).

Stated another way, a delay in disclosing records can rise to the level of a refusal if "there was no good reason for the delay." *Consumer Rights, LLC v. Union County*, 159 So. 3d 882, 885

(Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015). For example, in *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996), the court held that a town was liable for attorney's fees even if the delay in providing records was due to either the intentional wrongdoing or ineptitude of its clerk. *And see Office of the State Attorney for the Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So. 2d 759 (Fla. 2d DCA 2007) (attorney's fees authorized even if failure to turn over the records was due to a mistake or ineptitude). *Cf. Hewlings v. Orange County, Florida*, 87 So. 3d 839 (Fla. 5th DCA 2012) (the mere fact that a county quickly *responded* to public records request via voicemail and fax is not dispositive of whether the county's 45-day delay in complying with the request was justified).

"However, it is equally clear that a delay does not in and of itself create liability under s. 119.12, F.S." *Consumer Rights, LLC v. Union County*, 159 So. 3d at 885. *See also Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) (where delay is the issue, the court must determine whether the delay was justified under the facts of the particular case) and *McLendon v. Palm Beach County Office of Inspector General*, 286 So. 3d 375 (Fla. 4th DCA 2019) (trial court correctly denied attorney's fees because the requested record was exempt at the time that the request was made and did not become public until the investigation conducted pursuant to s. 112.3188 (2)(b), F.S., was concluded). *Cf. Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 401 (Fla. 4th DCA 2016) ("The public records law should not be applied in a way that encourages the manufacture of public records requests designed to obtain no response, for the purpose of generating attorney's fees.").

A lawyer may recover fees for his or her assistance of a pro se litigant before entering a notice of appearance provided that the complaint requested attorney's fees and disclosed that it was prepared with the assistance of counsel. *O'Boyle v. Town of Gulf Stream*, 341 So. 3d 343 (Fla. 4th DCA 2022). However, s. 119.12, F.S., "does *not* provide for (1) an award of attorney's fees for litigating the amount of the fees or (2) an award of fees attributable to the non-testifying associates of an attorney fee expert." *O'Boyle v. Town of Gulf Stream*, 341 So. 3d 335 (Fla. 4th DCA 2022). [Emphasis supplied by the court].

As to calculation of the reasonable costs of enforcement including reasonable attorney 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). *And see Grapski v. City of Alachua*, 134 So. 3d 987 (Fla. 1st DCA 2012), *review denied*, 118 So. 3d 220 (Fla. 2012) (the trial court's findings of fact on the issue of attorney's fees are presumed correct; the standard of review is abuse of discretion). 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.*

A different rule has been applied when it is unclear whether a *private* corporation is an "agency" for purposes of the Public Records Act. Section 119.12, F.S., "was not intended to force private entities to comply with the inspection requirements of chapter 119 by threatening to award attorney's fees against them." *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993). *Accord Fox v. News-Press Publishing Company, Inc.*, 545 So. 2d 941 (Fla. 2d DCA 1989).

Thus, attorney fees "are not warranted when the [private] entity in charge of the public records at issue was reasonably and understandably unsure of its status as an agency." *Lee v. Board of Trustees, Jacksonville Police & Fire Pension Fund*, 113 So. 3d 1010 (Fla. 1st DCA 2013), *approved*, 189 So. 3d 120 (Fla. 2016). *And see Economic Development Commission v. Ellis,* 178 So. 3d 118, 123 (Fla. 5th DCA 2016) ("attorney's fees should not be awarded in those cases where the party refusing to provide documents acted on the good-faith belief that it was not an agent, subject to compliance with the [Public Records] Act"). *Cf.* s. 119.0701(4), F.S., providing for

an award of attorney fees against a "contractor" as defined in s. 119.0701(a), F.S., found to have unlawfully refused to comply with a public records request within a reasonable time, provided that the plaintiff has complied with the conditions set forth in the statute.

Attorney 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 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); and *Cf. Johnson v. Jarvis*, 107 So. 3d 428 (Fla. 1st DCA 2012) (trial court erred in denying motion for costs based on appellant's failure to comply with the notice requirement in s. 284.30, F.S; "[f]or purposes of appellate costs, the appellant was the prevailing party . . . and is entitled to an award of his costs incurred therein").

Appellate attorney fees were also considered in *State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 254 So.3d 461 (Fla. 4th DCA 2018). In that case, the court denied the media's request for appellate attorney's fees from the state attorney's office and school board. The agencies had appealed the lower court's order allowing the media to access certain video footage taken by security cameras at a high school where a gunman killed students and staff. Although the media prevailed in the appeal, the court observed that the video footage was confidential security information under s. 119.071(3)(a), F.S. The media obtained access because a judge found "good cause" to release the video footage as authorized by a statutory exception to the confidentiality provision. Thus, the school board's conduct was not 'unlawful' for purposes of s.119.12(1)(a), F.S. Additionally, the court refused to award fees against the state attorney because the state attorney was not the custodian of the records at issue; the state attorney was only an intervenor in the lawsuit below.

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[1][b] 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 or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing 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.

I. MAINTENANCE, STORAGE AND RETENTION REQUIREMENTS

1. Maintenance and storage of records

All public records should be kept in the buildings in which they are ordinarily used. Section 119.021(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 119.021(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 119.021(1)(c), F.S.

Thus, public records may not routinely be 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); and AGO 07-14 ("Although the Public Records Law does not prescribe a location at which public records must be maintained, it does suggest that such records be kept where they are ordinarily used"). *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) and AGO 88-26 (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).

2. Delivery of records to successor

Section 119.021(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. 119.021(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 unit [MSBU], 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. Transition records of certain officers-elect

Section 119.035(4), F.S., states that "upon taking the oath of office, the officer-elect shall, as soon as practicable deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office." The term "officer-elect" for purposes of this section means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 119.035(5), F.S.

4. Retention and disposal of records

a. Retention schedules

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. *See generally* Chs. 1B-24 and 1B-26, Florida Administrative Code. The approved records retention schedule for state and local governmental entities is located online at dlis.dos.state.fl.us/barm/genschedules/GS1-SL.pdf. *Cf. L.R. v. Department of State, Division of Archives, History and Records Management*, 488 So. 2d 122 (Fla. 3d DCA 1986) (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).

Retention schedules for judicial branch records are established by court rule. *See* Fla. R. Gen. Prac. & Jud. Admin. 2.430 (court records) and Fla. R. Gen. Prac. & Jud. Admin. 2.440 (judicial branch administrative records). Similarly, procedures for maintenance and destruction of legislative records are established in legislative rules. Legislative rules may be accessed online at www.flsenate.gov (Florida Senate) and www.myfloridahouse.gov (Florida House of Representatives).

b. Disposal of 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." Section 119.021(2)(c), F.S., provides 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. *Compare* 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.

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 must follow public records retention schedules established by law for information on its Facebook page which constitutes a public record); 96-34 (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). *And see Raydient LLC v. Nassau County, Florida*, No. 2019-CA-000054 (Fla. 4th Cir. Ct. August 24, 2021), available in the Cases database at the open government site at myfloridalegal.com, finding that the "routine and indiscriminate destruction of text messages by [county commission] members and certain county employees, regardless of the content of each message, violated s. 119.021, F.S.," requiring that public records be kept in accordance with a retention schedule adopted by the Florida Department of State.

Similarly, registration and disciplinary records stored in a national association 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. AGO 98-54. *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). *Cf.* AGO 91-23 (clerk of court not authorized to expunge a court order from the Official Records, in the absence of a court order directing such action).

c. Exempt records

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 question and answer 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.

Moreover, if an assertion is made by the custodian that a requested record is not a public record subject to public inspection or copying, 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. Section 119.07(1)(h), F.S

d. Evidence obtained by law enforcement agencies

Documentary evidence obtained by a police department is a public record subject to retention schedules approved by the division. AGO 04-51. *Accord* Inf. Op. to Blair, August 24, 2011 (evidence that constitutes a public record may be destroyed only in accordance with retention schedules established by the division and noting that the division has adopted a General Records Schedule GS2 for law enforcement agencies).

However, "the disposition of evidence *not* constituting a public record within the meaning of Chapter 119, Florida Statutes, would appear to be dependent upon an agency's determination that it is no longer needed." Inf. Op. to Blair, August 24, 2011. (e.s.) *Cf. Church of Scientology Flag Service Org., Inc. v. Wood,* No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records because in order to constitute a "public record" for purposes of Ch. 119, "the record itself must be susceptible of some form of copying").

e. Duplicate records

Section 257.36(6), F.S., requires the division to adopt rules which, among other things, establish "[s]tandards for the reproduction of records for security or with a view to the disposal of the original record." *See* AGO 18-04 (according to a division rule, "an agency that designates an electronic or microfilmed copy as the record (master) copy may then designate the paper original as a duplicate and dispose of it in accordance with the retention requirement for duplicates in the applicable retention schedule unless another law, rule, or ordinance specifically requires its retention").

Accordingly, the division is responsible for determining whether an agency may dispose of an audiotape of a witness statement without regard to the retention schedule, if there is also a transcript of the statement. Inf. Op. to Mathews, July 12, 2004. *Cf.* AGO 91-09 (if a facsimile document is subsequently copied by the receiving agency, the facsimile document is considered an intermediate document which may be destroyed; the copy of the facsimile then is retained as a public record). *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.

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, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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, 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 or firesafety 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) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b)1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c)1. A complete recording shall be made of any portion of an exempt meeting. No portion of

the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting 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 an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting 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 an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(3)(a) That portion of a meeting held by a utility owned or operated by a unit of local government which would reveal information that is exempt under s. 119.0713(5) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting are exempt from disclosure under s. 119.07(1) and s. 24(a) of the State Constitution unless a court of competent jurisdiction, following an in-camera review, determines that the meeting was not restricted to the discussion of data and information made exempt by this section. In the event of such a judicial determination, only the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

(4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(e)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.

(c) No portion of an exempt meeting under paragraphs (a) or (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(e)1a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

(d) For purposes of this subsection, the term "public safety radio" is defined as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R 90 for public safety purposes.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from

repeal through reenactment by the Legislature.

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) For purposes of this section, "board or commission" means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations.

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with

enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

286.01141 Criminal justice commissions; public meetings exemption.—

(1) As used in this section, the term:

(a) "Duly constituted criminal justice commission" means an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues.

(b) "Active" has the same meaning as provided in s. 119.011.

(c) "Criminal intelligence information" has the same meaning as provided in s. 119.011.

(d) "Criminal investigative information" has the same meaning as provided in s. 119.011.

(2) That portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, provided that at any public meeting of the criminal justice commission at which such matter is being considered, the commission members publicly disclose the fact that the matter has been discussed.

286.012 Voting requirement at meetings of governmental bodies.—

A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not 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, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

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 (SELECTED PORTIONS ONLY)

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 online or stored in an electronic recordkeeping system used by the agency.

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

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

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

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

119.011 Definitions.— As used in this chapter, the term:

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

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

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

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

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

1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h) or (o).
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) or (m), 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.

(15) "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

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

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

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

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

(c)1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated,

damaged, or difficult to read.

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

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

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

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

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

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

(3) Agency final orders rendered before July 1, 2015, that were indexed or listed pursuant to s. 120.53, and agency final orders rendered on or after July 1, 2015, that must be listed or copies of which must be transmitted to the Division of Administrative Hearings 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.

119.035 Officers-elect.—

(1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.

(2) Public records of an officer-elect shall be maintained in accordance with the policies and

procedures of the public office to which the officer has been elected.

(3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.

(4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.

(5) As used in this section, the term "officer-elect" means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

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

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

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

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

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

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

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

(g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the

custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

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

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

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

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

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

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

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

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

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

(a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8½ 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.

(9) After receiving a request to inspect or copy a record, an agency may not respond to that request by filing an action for declaratory relief against the requester to determine whether the record is a public record as defined by s. 119.011, or the status of the record as confidential or exempt from the provisions of s. 119.07(1).

119.0701 Contracts; public records.—

(1) For purposes of this section, the term:

(a) "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

(b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

(2) **CONTRACT REQUIREMENTS—** In addition to other contract requirements provided by law, each public agency contract for services entered into or amended on or after July 1, 2016, must include:

(a) The following statement, in substantially the following form, identifying the contact information of the public agency's custodian or public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address).

(b) A provision that requires the contractor to comply with public records laws, specifically to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records, or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

(3) REQUEST FOR RECORDS; NONCOMPLIANCE. —

(a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

(b) If a contractor does not comply with a public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

(c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

(4) CIVIL ACTION. —

(a) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

(b) A notice complies with subparagraph (a)2., if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with

the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery services or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which must be in an electronic format.

(c) A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

NOTE: Due to space limitations, the exemptions from disclosure found in ss. 119.071, 119.0711, 119.0712, 119.0713, 119.0715, and 119.0725, F.S. are summarized in pages 239-241 of Appendix D. To review the complete text of these exemptions, please access the Florida Statutes at **leg.state.fl.us**

119.0714 Court files; court records; official records.—

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

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

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

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

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

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

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

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

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

(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).

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document hearing, and page

number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of court. A fee may not be charged for such request.

3. Any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

(l) Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2) and the names of family members, dependents, and beneficiaries of such payee contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights under s. 626.99296. Such information shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution during the pendency of the transfer proceeding and for 6 months after the final court order approving, or not approving, the transferee's application. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(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. 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.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.

(g) The clerk of the court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk of the court.

(3) OFFICIAL RECORDS.—

A 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.

(a) 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.

1. 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 (d), 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.

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

(b) 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.

1. 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.

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

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

(c) 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.

(d) 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 is deemed to be the best effort in performing the redaction and is deemed in compliance with the requirements of this subsection.

(e) 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.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

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 fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provides written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

(2) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

(3) The court shall determine whether the complainant requested to inspect or copy a public

record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. For purposes of this subsection, the term "improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose.

(4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

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 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) An 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 office 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 AND CONFIDENTIAL RECORDS 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.

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 E.

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 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 11.51(4), F.S. -- Work papers held by the Office of Program Policy Analysis and Government Accountability (OPPAGA) which relate to an authorized project or a research product are exempt.

Section 14.28, F.S. – All records developed or received by a state entity relating to a Board of Executive Clemency investigation are confidential and 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 15.16(3)(c), F.S. – Email addresses and secure login credentials held by the Department of State pursuant to the subsection are exempt from disclosure requirements.

Section 16.716(1)(2), F.S. – Any information obtained by the Florida Gaming Control Commission which is exempt or confidential shall retain its exempt or confidential status. The information may be released by the commission to a governmental entity under the conditions prescribed in the exemption. Any portion of a commission meeting during which exempt or confidential information is discussed is exempt provided certain requirements are met.

Section 17.0401, F.S. – Except as otherwise provided by this section, information relative to an investigation by the Chief Financial Officer pursuant to s. 17.04 is confidential and exempt from disclosure until the investigation is complete or ceases to be active, or if the Chief Financial Officer 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 caller on the governmental efficiency hotline established by the Chief Financial Officer under this section may remain anonymous, and, if the caller provides his or her name, the name is confidential.

Section 20.055(6)(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 24.1051(1), F.S. – Specified information, including records relating to security, lottery games and tickets, background checks, and nonpublic financial information about an

entity that is provided in connection with financial responsibility review by the Department of the Lottery, is confidential and exempt.

Section 24.1051(2), F.S. – The street address and telephone number of a winner are confidential and exempt from disclosure, unless the winner consents to the release of such information, or as provided in cited statutes.

Section 24.1051(3), F.S. – The name of a winner of a prize valued at $250,000 or more is confidential and exempt from disclosure for 90 days from the date the prize is claimed unless the winner consents to the release of his or her name or as provided for in cited statutes.

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 confidential and 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(5), F.S. – A county recorder may not place on a publicly available Internet website for general public display information made exempt from inspection or copying under s. 119.071 or a military discharge; death certificate; or court records relating to matters or cases governed by Florida rules relating to family law, juvenile procedure, or probate.

Section 39.00145(4), F.S. – Notwithstanding any other provision of law, all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including the listed agencies, and any provider contracting with such agencies, may share with each other confidential records or information if the records or information are reasonably necessary to ensure access to appropriate services for the child. However, records or information made confidential by federal law may not be shared. Also, this subsection does not apply to information concerning clients and records of certified domestic violence centers which are confidential under s. 39.908 and privileged under s. 90.5036.

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, criminal conflict and civil regional counsels, law enforcement agencies, the Department of Children and Families 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 39.101(3)(b), F.S. – The Department of Children and Families shall maintain the confidentiality of the telephone number, or Internet protocol (IP) address from which the report was received by the central abuse hotline which is included in the abuse report pursuant to this subsection in the same manner as given 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 Families 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, abandonment, 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, or other identifying information with respect to, 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(18), 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 Families and its designees, except upon court order.

Section 39.908, F.S. – Information about clients received by the Department of Children and Families 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 44.407(9), F.S. – Except as provided in the exemption, eldercaring coordination communications, as defined in the exemption, are confidential.

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)(i), 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 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 except as provided in s. 63.162(4), authorizing disclosure without a court order in certain circumstances. Adoption papers and records of the Department of Children and Families, a court, or any other governmental agency are exempt from s. 119.07(1).

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 68.083(8), F.S. – The complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the False Claims Act is confidential and exempt and may not be disclosed until the investigation is complete, or as otherwise provided in the exemption.

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. and 5., F.S. – All declinations to register to vote pursuant to this section (relating to voter registration by the Department of Highway Safety and Motor Vehicles) will remain confidential and may be used only for voter registration purposes. The particular driver license office in which the person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.

Section 97.0585, F.S. – The following information held by an agency and obtained for the purpose of voter registration 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 license number, and Florida identification number of a voter registration applicant or voter; and all information concerning preregistered voter registration applicants who are 16 or 17 years of age. The signature of a voter registration applicant or a voter is exempt from the copying requirements.

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 98.075(2)(c), F.S. – Information received by the Department of State from another state or the District of Columbia upon the department becoming a member of the nongovernmental entity provided in this subsection to share and exchange information in order to verify voter registration information, which is confidential or exempt pursuant to the laws of that state or the District of Columbia, is exempt from disclosure requirements.

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(2), F.S. – Information regarding a request for a vote-by-mail 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(2)(d) and (e), F.S. – It is a first degree misdemeanor to willfully use information contained in records obtained pursuant to employment screening required for

certain positions for purposes other than background screening or investigation for employment, or to release such information to other persons for purposes other than preemployment screening or investigation. 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 those specified in this section or to release such information to other persons for purposes other than those specified in the 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(10), 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 110.12301(3), F.S. – Records collected for the purpose of dependent eligibility verification services conducted for the state group insurance program and held by the Department of Management Services are confidential and exempt. This subsection does not apply to records that are otherwise open for inspection and copying which are held by the Department for purposes other than for the performance of dependent eligibility verification services.

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)(t), 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 112.31446(6)(a), F.S. – All secure login credentials held by the Commission on Ethics for the purpose of allowing access to the electronic filing system are exempt from disclosure requirements.

S**ection 112.31446(6)(b), F.S.,** – Information entered in the electronic filing system for purposes of financial disclosure is exempt from disclosure requirements. The information is no longer exempt once the disclosure of financial interests or statement of financial interests is submitted to the Commission on Ethics or, in the case of a candidate, filed with a qualifying officer, whichever occurs first.

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)(e), 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 or other specified entities are confidential and exempt from public disclosure. Written referrals and records relating to such referrals held by the Commission and referring entities, and records relating to any preliminary investigation of such referrals held by the Commission are confidential and exempt. Any portion of a proceeding conducted by the Commission or other specified entities pursuant to a complaint or referral are exempt from open meetings requirements. The above exemptions apply until: the complaint is dismissed as legally insufficient; the alleged violator requests in writing that such records and proceedings be made public; the Commission determines that it will not investigate a referral; or the Commission or other listed entity determines whether probable cause exists to believe that a violation has occurred.

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.

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.

Section 119.071(1)(a), F.S. – Examination questions and answer sheets of examinations administered for the purpose of licensure, certification, or employment are exempt. A person who has taken the examination has the right to review his or her own completed examination.

Section 119.071(1)(b), F.S. – Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation, as defined in the exemption, are exempt until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

Section 119.071(1)(c), F.S. – 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.

Section 119.071(1)(d), F.S. – A public record prepared by an agency attorney 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 litigation or proceedings, is exempt until the conclusion of the litigation or proceedings.

Section 119.071(1)(e), F.S. – 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.

Section 119.071(1)(f), F.S. – Agency-produced software that is sensitive is exempt.

Section 119.071(1)(g), F.S. – United States Census Bureau address information which is held by an agency pursuant to the Local Update of Census Addresses Program authorized under cited federal law, is confidential and exempt. Disclosure is authorized under the circumstances listed in the exemption.

Section 119.071(1)(h), F.S. –Information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under s. 288.9962, or pursuant to a federal broadband access grant program implemented by the department, is confidential and exempt, if such information is not otherwise publicly available and release would reveal information specified in the exemption.

Section 119.071(2)(a), F.S. – All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt.

Section 119.071(2)(b), F.S. – 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.

Section 119.071(2)(c), F.S. – Active criminal intelligence information and active criminal investigative information are exempt. A request by 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, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

Section 119.071(2)(d), F.S. – Any information revealing surveillance techniques or procedures or personnel is exempt. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to cited statute, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in cited statute, are exempt, and unavailable for inspection except by cited agencies.

Section 119.071(2)(e), F.S. – Any information revealing the substance of a confession of a person arrested is exempt, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

Section 119.071(2)(f), F.S. – Any information revealing the identity of a confidential informant or source is exempt.

Section 119.071(2)(g)1., F.S. – All complaints or 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 specified employment related activities are exempt 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 proceeding. The exemption does not affect any function or activity of the Florida Commission on Human Relations. Disclosure is authorized to governmental agencies as provided in the exemption.

Section 119.071(2)(g)2., F.S. – If an 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.

Section 119.071(2)(h), F.S. – The following criminal intelligence information or criminal investigative information is confidential and exempt: any information that reveals the identity of the victim of the crime of child abuse as defined by ch. 827, or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 786.06(3)(a); any information which may reveal the identity of a victim of any sexual offense including a sexual offense proscribed in cited statutes; a photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under cited statutes, regardless of whether the photograph, videotape, or image identifies the victim. Disclosure is authorized under the circumstances cited in the exemption.

Section 119.071(2)(i), F.S. – 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.

Section 119.071(2)(j)1., F.S. – 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 an agency that regularly receives information from or concerning the victims of crime, is exempt. Any information not otherwise exempt which reveals specified information of a person who has been a victim of stated crimes is exempt upon written request of the victim which must include official verification that an applicable crime has occurred. The exemption ends 5 years after the receipt of the written request.

Section 119.071(2)(j)2., F.S. – 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 cited statutes, which reveals specified information about that minor and identifies that minor as the victim of a crime described in cited statutes is confidential and exempt.

Section 119.071(2)(k), F.S. – A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential until the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint in the manner provided in the exemption.

Section 119.071(2)(l), F.S. – A body camera recording, or portion thereof, is confidential and exempt if the recording is taken within the locations specified in the exemption. Disclosure is authorized or required in specified circumstances.

Section 119.071(2)(m), F.S. – Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in cited statute, is confidential and exempt for 2 years after the date on which the murder is observed by the witness. Criminal justice agencies are authorized to disclose the information under the circumstances set forth in the exemption.

Section 119.071(2)(n), F.S. – Personal identifying information of the alleged victim in an allegation of sexual harassment or the victim of sexual harassment is confidential and exempt if such information identifies that person as an alleged victim or as a victim of sexual harassment. Such information may be disclosed to another governmental entity in the furtherance of its official duties. Confidentiality may be waived in writing by the victim or the alleged victim.

Section 119.071(2)(o), F.S. – The address of a victim of an incident of mass violence is exempt. For purposes of the exemption, the term "victim" means a person killed or injured during an incident of mass violence, not including the perpetrator. The term "incident of mass violence" means an incident in which 4 or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another.

Section 119.071(2)(p), F.S. – Except as provided in the exemption, photographs, videos, or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence or the killing of a minor, as these terms are defined in the exemption are confidential and exempt from disclosure.

Section 119.071(2)(q), F.S. – Conviction integrity unit reinvestigation information, as defined in the exemption, is exempt from disclosure for a reasonable period of time during an active, ongoing, and good faith investigation of an actual innocence claim in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation.

Section 119.071(2)(r), F.S. – Investigative genetic genealogy information and materials as defined in the exemption are confidential and exempt from disclosure requirements. Certain disclosures are authorized.

Section 119.071(3)(a), F.S. – A security or firesafety system plan, as defined in the exemption, or a portion thereof for a property owned by or leased to the state or any of its political subdivisions; or for any privately owned or leased property held by an agency is confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(3)(b), F.S. – Building plans, blueprints, schematic drawings and diagrams 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. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(3)(c), F.S. – Building plans, blueprints, schematic drawings, and diagrams 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, health care facility, or hotel or motel development, as these terms are defined in the exemption, which records are held by an agency, are exempt.

Section 119.071(3)(d), F.S. – Information relating to the National Public Safety Broadband Network established in cited federal law which is held by an agency is confidential and exempt if disclosure would reveal information cited in the exemption

Section 119.071(3)(e), F.S. – Building plans and other specified records that depict the structural elements of 911, E911, or public safety radio communication system infrastructure, structures, or facilities owned and operated by an agency, and geographical maps showing the actual or proposed locations of such communication system infrastructure, structures, or facilities are exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(4)(a), F.S. – The social security number of all current and former agency employees which are held by the employing agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the section.

Section 119.071(4)(b)1., F.S. – 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. However, the 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.

Section 119.071(4)(b)2., F.S. – Personal identifying information of a dependent child, as defined in cited statute, of a current or former officer of employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt.

Section 119.071(4)(c), F.S. – Any information revealing undercover personnel of any criminal justice agency is exempt.

Section 119.071(4)(d), F.S. – Home addresses, telephone numbers, and other specified personal information of specified current and former public employees and officers and their families are exempt. For more information, please refer to the text of the Florida Statutes at www.leg.state.fl.us or you may review pages 144-154 of this Manual.

Section 119.071(4)(e), F.S. – Law enforcement geolocation information, as defined in the exemption, that is held by a law enforcement agency is exempt. The exemption does not apply to traffic citations, crash reports, homicide reports, arrest reports, or any other official reports issued by an agency which contain law enforcement geolocation information. Disclosure is authorized under specified circumstances.

Section 119.071(5)(a), F.S. – Social security numbers held by an agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(b), F.S. – Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt.

Section 119.071(5)(c), F.S. – Information that would identify or locate a child, as that term is defined in the exemption, who participates in a government-sponsored recreation program, as that term is defined in the exemption, is exempt. Information that would identify or locate a parent or guardian of the child participant is exempt.

Section 119.071(5)(d), F.S. – All records supplied by a telecommunications company, as defined by cited statute, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt.

Section 119.071(5)(e), F.S. – 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 cited statute, is exempt.

Section 119.071(5)(f)1.a., F.S. – Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, 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. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(f)1.b., F.S. – Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster that is held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(g), F.S. – Biometric identification information, as defined in the exemption, held by an agency before, on, or after the effective date of this exemption is exempt.

Section 119.071(5)(h), F.S. – Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(i), F.S. – Identification location information, as defined in the exemption, of current or former federal prosecutors, judges, and magistrates and their spouses and children is exempt, provided that certain conditions are met.

Section 119.071(5)(j), F.S. – Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency is exempt.

Section 119.0711, F.S. – When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of eminent domain, all appraisals, other reports relating to value, offers, and counter offers are exempt until execution of a valid option contract, as defined in the exemption, or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. 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 disclosure requirements to the same extent as appraisals, other reports relating to value, offers, and counteroffers.

Section 119.0712(1), F.S. – All personal identifying information contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health is confidential and exempt from disclosure requirements. Information made confidential and exempt by this subsection shall be disclosed with the express written consent of the individual or the individual's legal authorized representative; in a medical emergency, but only to the extent necessary to protect the health or life of the individual; by court order upon good cause; or to a health research agency under the conditions set forth in the subsection.

Section 119.0712(2)(b), F.S. – Personal information, including highly restricted personal information as defined in cited federal law, contained in a motor vehicle record, as defined in the exemption, 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.

Section 119.0712(2)(c), F.S. – E-mail addresses collected by the Department of Highway Safety and Motor Vehicles pursuant to cited statutes are exempt from disclosure requirements.

Section 119.0712(2)(d), F.S. – Emergency contact information contained in a motor vehicle record, is confidential and exempt. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in an emergency, or to a receiving facility, hospital, or licensed detoxification or addictions receiving facility pursuant to cited statutes for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts.

Section 119.0712(2)(f)1, F.S. – Secure login credentials, as defined in the exemption, that are held by the Department of Highway Safety and Motor Vehicles are exempt.

Section 119.0712(2)(f)2, F.S. – Internet protocol addresses, geolocation data, and other information held by the Department of Highway Safety and Motor Vehicles which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, as defined in the exemption, and the dates and times that a user accesses the portal, are exempt.

Section 119.0712(3), F.S. – The following information held by the Office of Financial Regulation is confidential: Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law; any information received or developed by the Office as part of a joint or multiagency examination or investigation with such agencies.

Section 119.0712(4), F.S. – Information held by the Department of Military Affairs that is stored in a United States Department of Defense system of records, transmitted using a United States Department of Defense network or communications device, or pertaining to the United States Department of Defense, pursuant to cited federal law, is exempt.

Section 119.0713(1), F.S. – 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 until a finding is made relating to probable case, 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 does not affect any function or activity of the Florida Commission on Human Relations. Access by specified agencies is authorized.

Section 119.0713(2) – The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government, as defined in the exemption, becomes a public record when the audit report or investigative report becomes final. An audit or investigation becomes final when it is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

Section 119.0713(3), F.S. – 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. The exemption commences when a municipal utility identifies in writing a specific bid to which it intends to respond, and no longer applies when the conditions occur as set forth in the exemption.

Section 119.0713(4), F.S. – Proprietary confidential information, as defined in the exemption, which is held by an electric utility that is subject to Ch. 119 in conjunction with a due diligence review of an electric project, as defined in cited statute, or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt.

Section 119.0713(5)(a), F.S. – The following information held by a utility owned or operated by a unit of local government is exempt from public disclosure requirements: Specified security technology information and customer meter-derived data and billing information in increments less than one billing cycle.

Section 119.0715, F.S. – A trade secret, as defined in s. 688.002, that is held by an agency is confidential and exempt. Disclosure is authorized to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her responsibilities.

Section 119.0725(2)(3)(5), F.S. – The following information held by an agency is confidential and exempt: Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency; information relating to critical infrastructure; cybersecurity incident information reported pursuant to cited statutes; specified information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information as specified in the exemption. Any portion of a meeting revealing information made confidential under subsection (2) is exempt from open meetings requirements. The exempt portion may not be off the record and must be recorded and transcribed; the recording and transcription are confidential and exempt. Disclosure of confidential information is authorized as provided in the exemption.

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 of a member in the investment plan 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: 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).

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 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 197.3225, F.S. – A taxpayer's e-mail address held by a tax collector for sending specified tax notices or for obtaining the taxpayer's consent to send notices is exempt from disclosure requirements.

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 for, administration and enforcement of the tax laws of this state.

Section 213.0535(5), F.S. – A 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, a provision imposing penalties for disclosure, applies to recipients of this data and their employees. Data exchanged under this section may not be provided to a person or entity except as authorized in the exemption.

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 215.4401(1), 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 215.4401(2), 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 215.4401(3)(b), 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(4), 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 252.385(5), F.S. – The address and telephone number of a person provided public emergency shelter during a storm or catastrophic event and held by the agency, as defined in s. 119.011, that provided the emergency shelter are exempt from disclosure.

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 252.905, F.S. – Any information furnished by a person or a business to the Division of Emergency Management for the purpose of being provided assistance with emergency planning is exempt.

Section 252.943, F.S. – In accordance with the federal Clean Air Act, trade secret information provided to the Division of Emergency Management 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(8)(f), F.S. – Except as provided in the exemption, appraisal reports prepared for the Board of Trustees of the Internal Improvement Trust Fund or an agency 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.

Section 253.025(9)(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 253.0341(8)(a), 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. Prior to expiration of the exemption, disclosure of certain information is authorized under the circumstances described in the exemption.

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 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 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 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 265.7015, F.S. – If a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center, as defined in the exemption, desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt.

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), F.S. – Any information identifying a donor or prospective donor to the direct-support organization, authorized by the University of Florida to assist it in the historic preservation of the City of St. Augustine, who desires to remain anonymous, 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, is, if made confidential by any law of the United States or of this state, confidential and exempt from s. 119.07(1) and not subject to dissemination to anyone other than the Chief Financial Officer under this chapter.

Section 282.318(4)(d)(e)(g), F.S. – The following information is confidential and exempt and may not be disclosed except as provided in the subsection: risk assessment information to determine security threats to data, information, and information technology resources of the agency; 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; and results of periodic internal audits and evaluations of the information technology security program for an agency's data and information technology resources.

Section 282.318(5), F.S. – Portions of risk assessments and other reports of a state agency's cybersecurity program are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure or destruction of data or information as described in the exemption. Disclosure is authorized as provided in the exemption. The term "state agency" as used in this section is defined in s. 282.318(2), F.S.

Section 282.318(6), F.S. – Those portions of a public meeting which would reveal records which are confidential under subsection (5) are exempt from s. 286.011. All exempt portions shall be recorded and transcribed. Disclosure is authorized as provided in the exemption.

Section 284.40(2), F.S. – Claims 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).

NOTE: DUE TO SPACE LIMITATIONS, THE EXEMPTIONS FROM DISCLOSURE FOUND IN CHAPTER 286 ARE NOT SUMMARIZED IN THIS APPENDIX. THE TEXT OF THESE EXEMPTIONS IS CONTAINED IN APPENDIX B (SUNSHINE LAW AND RELATED STATUTES).

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 287.137(8)(a), F.S. – All information received by the Attorney General or a law enforcement agency pursuant to investigations into certain prohibited social media activities is confidential and exempt under such time as the investigation is completed or ceases to be active.

This exemption shall be construed in conformity with s. 119.071(2)(c).

Section 288.002, 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 the former Enterprise Florida, Inc., including its affiliates and participants, are confidential and exempt from disclosure, except that a recipient of the former 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. Effective July 1, 2023, the Department of Commerce is the custodian of any public records made confidential and exempt under this section.

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 CareerSource 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(2)-(6), F.S. – If a private entity requests in writing before an economic incentive agreement is signed that an economic development agency (EDA) maintain the confidentiality of information concerning the plans, intentions, or interests of the private entity to locate, relocate or expand its business activities in Florida, the information is confidential and exempt from disclosure for 12 months after the EDA receives a request for confidentiality or the information is otherwise disclosed, whichever occurs first. An EDA may extend the period of confidentiality for up to an additional 12 months under certain conditions. If a final project order for a signed economic development agreement is issued, then the information remains confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such confidentiality may not extend beyond the period of confidentiality established in the exemption. Trade secrets and the federal employer identification number, reemployment assistance account number, or Florida sales tax registration number held by an EDA are confidential and exempt, as well as other records as described in the exemption. Specified information held by an EDA relating to a specific business participating in an economic incentive program is no longer confidential or exempt 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first.

Section 288.075(7), F.S. – Tax returns, financial information, credit history information, credit reports, and credit scores held by an economic development agency pursuant to its administration of a state or federally funded small business loan program are exempt from disclosure. Disclosure of information in an aggregated and anonymized format is not prohibited.

Section 288.1226(7), 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 288.776(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 288.9607(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(2) and (3), F.S. – The following records held by the Florida Opportunity Fund are confidential and exempt: materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects and that are provided by a proprietor; information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Fund; as well as proprietary confidential business information regarding alternative investments for 7 years after the termination of the alternative investment. That portion of the meeting of the board of the Fund at which such confidential information is discussed is confidential and exempt; the exempt portion of the meeting shall be recorded and transcribed as provided therein. The transcript and minutes of the exempt meeting are confidential.

Section 288.9627(2) and (3), F.S. – The following records held by the Institute for Commercialization of Florida Technology are confidential and exempt: materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered through research by universities and other publicly supported organizations in this state and that are provided to the Institute by a proprietor; information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Institute for assistance; information received from a person in another state or the Federal Government which is otherwise confidential or exempt by law of that entity; and proprietary confidential business information for 7 years after the termination of the Institute's financial commitment to the company. That portion of the meeting of the board of the Institute at which such confidential information is discussed is confidential and exempt; the exempt portion of the meeting shall be recorded and transcribed as provided therein. The transcript and minutes of the exempt meeting are confidential.

Section 288.985, F.S. – Specified information held by the Florida Defense Support Task Force relating to selection criteria for the realignment and closure of military bases and missions is exempt and that portion of Task Force meetings where exempt records are presented and discussed is exempt as well as records generated during the closed meeting.

Section 292.055(9), F.S. – Any information identifying a donor or prospective donor to the Department of Veterans' Affairs direct-support organization who desires to remain anonymous is confidential and exempt; portions of meetings of the direct-support organization during which the identity of such donor or potential donor is 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(2)(a)(b)(c)(f), F.S. – 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 are confidential for a period of 60 days, except as authorized in the exemption. Reports may be released 60 days after the report is filed to authorized entities and agencies, or in accordance with specified provisions of cited federal law.

Section 316.066(2)(g), F.S. – If crash reports are created by or submitted to an agency electronically as data elements within a computerized database or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential. Sixty days after the date the crash report is filed, an agency may provide crash data derived from the report which includes personal information to authorized entities or in accordance with specified provisions of cited federal law.

Section 316.0777(3)(4), F.S. – Certain images and data obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated from such images are confidential and exempt. Disclosure is authorized in specified circumstances.

Section 316.650(11), F.S. – Driver information, as defined in the exemption, contained in a uniform traffic citation is exempt from disclosure requirements. Driver information may be released as provided in s. 119.0712(2)(b) and pursuant to the sale and redisclosure provisions in cited federal law.

Section 319.1414(5), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (department-authorized private rebuilt inspection providers) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

Section 319.25(7), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (title certificates) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

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, or any office of criminal conflict and civil regional counsel, 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 320.861(5), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (motor vehicle licenses) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

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 may 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 its records 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.

Section 322.71(5), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (driver licenses) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

Section 324.242, F.S. – Information as set forth in the exemption that pertains to personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles is confidential and exempt. Specified disclosures are authorized as set forth in the exemption.

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 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.

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. Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt.

Section 337.168, F.S. – A document or electronic file revealing the Department of Transportation's official cost estimate for a project is confidential and exempt until the contract for the project has been executed or until the project is no longer under active consideration. The bid analysis and monitoring system is confidential and exempt.

Section 338.155(6), F.S. – Personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities 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 339.55(10), F.S. – Financial information, as defined in the exemption, of a private entity applicant required by the Department of Transportation as part of the application process for loans or credit enhancements from the state-funded infrastructure bank is exempt from s. 119.07(1). The exemption does not apply to records of an applicant who is in default of a loan issued under this section.

Section 341.0521, 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 350.01(9), F.S. – Those portions of a hearing conducted by the Public Service Commission wherein proprietary confidential business information that is confidential or exempt from disclosure pursuant to cited statutes, is discussed are exempt from s. 286.011. No exempt portion may be made off the record and all exempt portions shall be recorded and transcribed. The recordings and transcripts are confidential unless a court finds that the hearing was not restricted to the discussion of proprietary confidential information, in which case only that portion which reveals nonexempt information may be disclosed to a third party.

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)(a) and (b), 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 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. However, disclosure of the location of a coronary emergency to a private person or entity that owns an automated external defibrillator is authorized in some circumstances, as set forth in the exemption.

Section 365.174, F.S. – Proprietary confidential business information, as defined in the exemption, that is submitted by a provider to the Emergency Communications Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue, is confidential and exempt from s. 119.07(1) and may not be disclosed except as provided in the exemption.

Section 366.04(9)(c), F.S. – Upon request by a communications services provider, any records that are received by the Public Service Commission under this paragraph which are proprietary confidential business information under cited statutes shall retain their status as confidential or exempt from s. 119.07(1), F.S.

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 373.089(1)(b)(c), F.S. – A written valuation of land determined to be surplus by the governing board of a water management district pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such land are confidential and exempt. The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered by the district. Before expiration of the exemption, disclosure is authorized as provided in the exemption.

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 373.4598(4)(b), F.S. – Appraisal reports, offers, and counter offers in relation to this subsection (Everglades Agricultural area reservoir project) are confidential and exempt, as provided in s. 373.139.

Section 373.69ArticleXIII(a)(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 Agriculture and Consumer Services 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 379.1026, F.S. – Site-specific location information held by an agency of animals listed by a federal agency as threatened or endangered is exempt from disclosure. The exemption does not apply to the site-specific location of animals held in captivity.

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 379.362(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(6), 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 made public only when necessary to public health.

Section 381.00318, F.S. – A complaint alleging a business entity's, a governmental entity's, or an educational institution's violation of statutes prohibiting discrimination based on health care choices, and all information relating to an investigation of such complaint, held by the Department of Legal Affairs or the Department of Health is confidential and exempt until the investigation is completed or ceases to be active, as defined in the exemption. Specified information as described in the exemption remains confidential after the investigation is completed or ceases to be active.

Section 381.004(2), (3), (4), and (5), 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(2) 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(4)(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 381.82(3)(d), F.S. – Research grant applications provided to the Alzheimer's Disease Research Grant Advisory Board and any records generated by the board relating to review of such applications, except final recommendations, are confidential. Those portions of a meeting during which applications are discussed are exempt, but the closed portions must be recorded.

Section 381.8531, F.S. – The following information held by the Florida Center for Brain Tumor Research is confidential and exempt from disclosure requirements: Any information received from an individual from another state or nation or the federal government that is otherwise confidential or exempt. Personal identifying information of a donor to the central repository or the brain tumor registry is also confidential and exempt from disclosure.

Section 381.92201(1), (2), and (3), F.S. – Records relating to biomedical research grant applications presented to the peer review panel are confidential and exempt; that portion of a peer review panel in which grant applications under cited statutes are discussed is exempt from public meetings requirements; and records generated by the peer review panel relating to review of such applications, except final recommendations, are confidential and exempt. Also published at s. 215.56021, F.S.

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 381.987(1)(2)(3), F.S. – The following information held by the Department of Health is confidential and exempt: A patient's or caregiver's personal identifying information in the medical marijuana use registry established under s. 381.986, F.S., and all personal identifying information pertaining to the physician certification for marijuana and the dispensing thereof. Access is authorized under circumstances set forth in the exemption.

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 382.008(8), F.S. – All information relating to the cause of death and parentage of a nonviable fetus, the marital status of such fetus' parent, and any medical information included in

nonviable birth records held by a state agency is confidential and exempt, except for research purposes as approved by the Department of Health. Certified copies may be issued as provided in the exemption.

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 125 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 held by the State Child Abuse Death Review Committee or local committee which reveals the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential and exempt. Any information held by the Committee or a local committee which reveals the

identity of a deceased child whose death is not the result of abuse or neglect, or the identity of the surviving siblings, family members, or others living in the deceased child's home, 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; 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(6)(f), F.S. – 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 is confidential and exempt if held by a circuit court, an appellate court, the office of criminal conflict and civil regional counsel, or the Justice Administrative Commission.

Section 390.01118, 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 consent requirements under the Parental Notice of and Consent for Abortion Act is confidential and exempt if held by a circuit court, an appellate court, the office of 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 (8), 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 from s. 119.07(1).

Section 394.464(1) and (3), F.S. – All petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under "The Baker Act" are confidential and exempt. Pleadings and other documents made confidential and exempt may be disclosed by the court upon request to certain persons and entities. The clerk may not publish personal identifying information on a court docket or in a publicly accessible file.

Section 394.467(6)(a)3., 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 394.921(2), F.S. – Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, or victim impact statements that have been submitted to the court or admitted into evidence in Jimmy Ryce Act proceedings shall be part of the record but shall be sealed and may be opened only pursuant to a court order.

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 395.1056, 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, including contracts for managed care arrangements, strategic plans, trade secrets, as described in the subsection, are confidential and exempt from disclosure.

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 entity 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 entity are exempt from open meetings requirements when the public lessor complies with the public finance accountability provisions of s. 155.40(18) 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(13), 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 395.51(1) and (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 397.334(10), F.S. – Information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in specified records is confidential and exempt. Disclosure is permitted under specified conditions.

Section 397.4075(3), F.S. – It is a third degree felony 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 397.4103(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 Families 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 397.501(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 397.6760(1), F.S. – Petitions for involuntary assessment and stabilization, court orders, related records, and personal identifying information regarding substance abuse impaired persons which are filed with or by a court under Part V of ch. 397, are confidential. Disclosure is authorized upon request to persons and entities specified in the exemption.

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, F.S. – The interdisciplinary record of hospice patient care and billing records are confidential and may not be released except as provided in the exemption. 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 Families 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 Families shall be limited to child support enforcement purposes.

Section 402.88(4), F.S. – All records and personal identifying information related to the enrollment of persons in a persons with disabilities registry established pursuant to s. 402.88 and held by a local law enforcement agency are confidential and exempt. Disclosure is authorized by court order or as otherwise provided in the exemption.

Section 403.067(7)(c)6., 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 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(2)(a), 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.

Section 406.135(2)(b), F.S. – An autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt, except as provided in the exemption.

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(9), 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(10), 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(12), 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 are confidential and exempt from disclosure for one year after the date of submission.

Section 408.910(14), F.S. – Personal identifying information of an enrollee or participant in the Florida Health Choices Program is confidential and exempt from public disclosure. In addition, certain proprietary confidential business information is confidential.

Section 409.1678(6), F.S. – Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in cited statute, which is held by an agency, is confidential and exempt; however, the information may be disclosed as provided in the exemption.

Section 409.175(12), F.S. – It is unlawful for any person, agency, family foster home, 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 Families 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)(i), 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 409.91196(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 cited statute 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 Families 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 Families 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 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 Foundation 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 Families, CareerSource Florida, Inc., or a local workforce development board or local committee created pursuant to s. 455.007 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)(l), 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 415.1103(10), F.S. – Confidential or exempt information obtained by an elder or vulnerable adult abuse fatality review team retains that status when held by the review team. Information contained in a record created by a review team that reveals the identity of a victim of abuse, exploitation or neglect or the identity of persons responsible for the welfare of such victim is confidential and exempt. Portions of review team meetings relating to abuse, exploitation, or neglect or abuse-related deaths of elderly persons or otherwise vulnerable adults, and the prevention of such abuse, exploitation, neglect, or deaths, during which exempt or confidential information, the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed are exempt from open meetings requirements.

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 420.6231, F.S. – Individual identifying information of a person in specified homeless management information system is confidential and exempt. Release of aggregate information that does not disclose identifying information is not precluded.

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 440.1851(1), F.S. – Personal identifying information of an injured or deceased employee which is contained in records of the Department of Financial Services pursuant to the Workers' Compensation Law is confidential, except as otherwise provided in the exemption.

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 (Reemployment Assistance) shall be governed by s. 443.1715.

Section 443.1316(2)(b), F.S. – Provisions of cited statutes which relate to confidentiality of records apply to collection of reemployment assistance contributions and reimbursements by the Department of Revenue unless prohibited by federal law.

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 (Reemployment Assistance), 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 (Reemployment Assistance) is confidential and exempt until introduced into the public record under a hearing conducted under s. 443.151(4).

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(10), 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 456.014(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, the patient's legal representative, or other health care practitioners and providers involved in the patient's care and treatment.

Section 456.057(9), 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(13), F.S. – All information obtained by the consultant pursuant to the impaired practitioner program provided by this section is confidential and exempt from s. 119.07(1), F.S.

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, and shall be disclosed only as provided in the subsection. NOTE: Also published in 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 464.0096, F.S., – Specified records obtained from the coordinated licensure health information system established in s. 464.0095 are exempt as are portions of meetings of the Interstate Commission of Nurse Licensure Compact Administrators where exempt records are discussed.

Section 464.208(2), 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(3), 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 474.2167, F.S. – Animal medical records held by a state college of veterinary medicine are confidential and exempt.

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(5), 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 490.0076, F.S. – A psychologist's personal identifying information, other than the psychologist's name, licensure status, or licensure number, obtained from the coordinated licensure information system, as described in s. 490.0075, and held by the Department of Health or the Board of Psychology is exempt from disclosure requirements unless disclosure is authorized by the state that originally reported the information to the information system. A meeting or portions of a meeting of the Psychology Interjurisdictional Compact Commission, established in s. 490.0075, at which matters specifically exempted from disclosure by state or federal statute are discussed is exempt from s. 286.011. Records generated during an exempt meeting are exempt from disclosure requirements.

Section 491.017 – The Counseling Compact Commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if specified topics must be discussed. If a meeting is closed, the commission's counsel must certify that the meeting may be closed and must reference each relevant exempting provision. Minutes must be kept as described in the exemption. The minutes and documents of a closed meeting must remain under seal subject to release as provided in the exemption.

Section 491.018, F.S. – A counselor's personal identifying information, other than the counselor's name licensure status, or licensure number obtained from the data system, as described in Article X of s. 491.017, and held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is exempt from disclosure requirements unless disclosure is authorized by the state that originally reported the information to the data system. A meeting or portions of a meeting of the Counseling Compact Commission, or the executive committee or other committees of the commission, at which matters specifically exempted from disclosure by state or federal law are discussed is exempt. Records generated during an exempt meeting are exempt.

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(7), 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.

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)(a)(b), F.S. – The complaint and all information obtained pursuant to an investigation by the Department of Business and Professional Regulation under the Florida

Drug and Cosmetic Act are confidential and exempt from disclosure until the investigation and enforcement action are completed. Disclosure is authorized as provided in the exemption.

Section 500.148(1), F.S. – The complaint and all 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 501.171(11), F.S. – Information received by the Department of Legal Affairs pursuant to a notice of a data breach or pursuant to certain investigations is confidential and exempt until the investigation is completed or ceases to be active, although certain information remains confidential. Disclosure is authorized under specified circumstances.

Section 501.1735(6), F.S. – All information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1735, relating to protection of children in online spaces, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section is confidential and exempt until such time as the investigation is completed or ceases to be active, although certain information remains confidential. Disclosure is authorized as provided in the exemption. This exemption takes effect on July 1, 2024.

Section 501.2041(10)(a), F.S. – All information received by the Department of Legal Affairs pursuant to an investigation by the department or a law enforcement agency into certain prohibited social media platform activities is confidential and exempt until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c), F.S. Specified information as described in the exemption remains confidential after the investigation is completed or ceases to be active.

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 501.722, F.S. – All information received by the Department of Legal Affairs pursuant to a notification of a violation of part V of ch. 501, relating to certain data privacy provisions, or received by the department pursuant to an investigation by the department of law enforcement agency of a violation of that part, is confidential and exempt until such time as the investigation is completed or cases to be active, although specified information remains confidential. Disclosure is authorized as provided in the exemption. This exemption takes effect on July 1, 2024.

Section 517.12(13), F.S. – Currency transaction reports filed with the Office of Financial Regulation by dealers and investment advisers pursuant to this subsection are confidential and exempt from s. 119.07(1) except as provided in the subsection.

Sections 517.2015 (securities) and 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 517.2016, F.S. – Information that would reveal examination techniques or procedures used by the Office of Financial Regulation pursuant to the Florida Securities and Investor Protection Act 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 548.062(2), F.S. – Proprietary confidential business information, as defined in the exemption, provided by a promoter to the Florida State Boxing Commission or obtained by the commission through an audit of a promoter's books and records is confidential and exempt. Disclosure is authorized under specified circumstances.

Section 550.0251(9), F.S. – All information obtained by the Florida Gaming Control Commission 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 Florida Gaming Control Commission 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 559.5558(2), F.S. – Information held by the Office of Financial Regulation pursuant to an investigation or examination of a violation of statutes relating to consumer

collection practices is confidential and exempt until the investigation or examination is complete or no longer active. Disclosure is authorized to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities. However, specified information, including certain consumer information, remains confidential.

Section 559.952(5)(h), F.S. – Certain information provided to and held by the Office of Financial Regulation in a Financial Technology Sandbox application by specified providers of innovative financial products or services is confidential and exempt. Confidential information may be released as provided in the exemption.

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 this chapter (Money Services Businesses), 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 under s.560.118(2) are confidential.

Section 560.312(1)(2), F.S. – Payment instrument transaction information held by the Office of Financial Regulation pursuant to s. 560.310, F.S. (check cashing and foreign currency exchangers) which identifies a licensee, payor, payee, or conductor is confidential and exempt, except as provided in the exemption.

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 570.077, F.S. – Information held by the Department of Agriculture and Consumer Services as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative or criminal justice agency which is confidential or exempt under the laws or regulations of that state or federal agency is confidential and exempt. Disclosure is authorized under specified circumstances. The exemption does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

Section 570.544(8), 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 does not violate this prohibition.

Section 570.686, 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 570.691(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 570.715(5), F.S. – Appraisal reports for conservation easement acquisition are confidential and exempt, for use by the Department of Agriculture and Consumer Services and the Board of Trustees of the Internal Improvement Trust Fund, 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 department may release a report when the passage of time has rendered the conclusions of value invalid or when the department has terminated negotiations.

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 585.611(1), F.S. – Personal identifying information of those persons employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research is exempt from disclosure when such information is contained in specified records relating to animal research.

Section 595.409(1)(2), F.S. – Personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Departments of Agriculture and Consumer Services, or Education is exempt. Such information shall be disclosed as provided in the exemption.

Section 597.0042, F.S. – Certain aquaculture records held by the Department of Agriculture and Consumer Services are confidential and exempt. Disclosure to another governmental entity in the performance of its duties is authorized.

Section 601.10(8), F.S. – Any non published reports or data related to studies or research conducted, caused to be conducted, or funded by the Department of Citrus under s.601.13, is confidential and exempt.

Section 616.242(14)(b), F.S. – All investigatory records made or received by the Department of Agriculture and Consumer Services pursuant to an amusement ride investigation are confidential and exempt from public disclosure requirements until the investigation is completed or cases to be "active" as that term is defined in the exemption.

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. The confidential and exempt information may be disclosed to the persons and entities described in the exemption.

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 624.4212(2)(3)(4), F.S. – Certain proprietary confidential business information held by the Office of Insurance Regulation, specified reports submitted, and confidential information received from other jurisdictions which is held by the Office relating to insurer valuation and solvency, are confidential and exempt. Disclosure is authorized under specified circumstances.

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)9., 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) and is not subject to subpoena or discovery directly from the Office.

Section 625.1214(1), F.S. – Documents, reports, materials, and other information created, produced, or obtained pursuant to ss. 625.121 and 625.0212 (valuation of policies and contracts) are privileged, confidential, and exempt as provided in s. 624.4212, and are not subject to subpoena or discovery directly from the Office of Insurance Regulation.

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 626.601(6), F.S. – The complaint and any information obtained pursuant to the investigation by the Office of Insurance Regulation or the Department of Financial Services are confidential and exempt from s. 119.07(1), unless the department or the Office takes specified action against the individual or entity.

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 626.84195(2), F.S. – Proprietary business information, as defined in the exemption, provided to the Office of Insurance Regulation by a title insurance agency or insurer is confidential and exempt until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information.

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 must 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 626.9891(11)(a), F.S. – Information relating to investigation and tracking of insurance fraud submitted by insurers to the Department of Financial Services is exempt from public disclosure.

Section 627.0628(3)(g), F.S. – A trade secret as defined in s. 668.002 that is used in designing and constructing a hurricane or flood 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. 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. 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 627.3518(11), F.S. – Proprietary confidential business information, as defined in the exemption, that is provided to the Citizens Property Insurance Corporation clearinghouse is confidential and exempt.

Section 627.352, F.S. – Those portions of a risk assessment, an evaluation, an audit, and any other report of the Citizen Property Insurance Corporation's information technology security program are confidential and exempt from disclosure requirements, if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or security information as described in the exemption. Portions of meetings which would reveal such data and information are exempt from s. 286.011, F.S. All exempt portions must be recorded and transcribed and the recordings and transcript must be kept confidential and exempt. Confidential and exempt records must be made available to agencies specified in the exemption.

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 628.801(4), F.S. – Filings and related documents filed by insurance holding companies as provided in this section are confidential and exempt as provided in s. 624.4212 and are not subject to subpoena or discovery directly from the Office of Insurance Regulation.

Section 631.195, F.S. – Specified records of an insurer which are made or received by the Department of Financial Services acting as a receiver are confidential and exempt, including personal and financial information of a consumer, consumer claim files, personnel and payroll records, underwriting files, specified risk information and corporate governance records submitted pursuant to cited statutes and confidential information received from other governmental entities. Release is authorized under certain circumstances.

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 633.112(7), F.S. – Records obtained or prepared by the State Fire Marshal pursuant to his or her investigation of fires and explosions 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 633.126(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 633.324(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 648.26(3), F.S. – The Department of Financial Services' investigatory records pertaining to bail bond agents 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. Certain disclosures are authorized as provided in the exemption.

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 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 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. Certain disclosures are authorized as provided in the exemption.

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. – Except as otherwise provided in this section and except for those portions that are otherwise public record, after an investigation relating to an informal enforcement action is completed or cases to be active, informal enforcement actions are confidential and exempt to the extent that disclosure would cause any of the consequences listed in the subsection.

Section 655.057(4), F.S. – Except as otherwise provided in this section and except for those portions that are otherwise public record, trade secrets as defined in s. 688.002 which comply with s. 655.0591 and which are held by the Office of Financial Regulation in accordance with its statutory duties with respect to the financial institutions codes are confidential and exempt.

Section 655.057(5), 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(6)(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(7), 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(8), 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(9), F.S. – Confidential documents supplied to the Office of Financial Regulation or to employees of a financial institution by other governmental agencies 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 and Terrorist Financing in Financial Institutions Act) are confidential and exempt from s. 119.07(1).

Section 662.1465, F.S. – In specified statutory proceedings in which a family trust company is a party, the clerk must, on written notice from a party, keep all court records of that case separate from other court records and confidential. However, disclosure is required to specified individuals.

Section 662.148(2), F.S. – Certain information, including personal identifying information, held by the Office of Financial Regulation, which relates to a family trust company, is confidential and exempt.

Section 663.416(2), F.S. – Certain information, including personal identifying information of the customers or prospective customers of an affiliated international trust entity, held by the Office of Financial Regulation is confidential and exempt.

Section 663.540(2), F.S. – Certain information, including personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the records of a qualified limited services affiliate, held by the Office of Financial Regulation is confidential and exempt.

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 unclaimed property are confidential and exempt.

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 Condominiums, Timeshares, 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 Condominiums, Timeshares, 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 with the clerk of court in an estate proceeding is confidential and exempt. Disclosure is authorized under specified circumstances.

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 or sexual 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 741.4651, F.S. – 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 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 742.16(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 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 744.2103(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 744.21031, F.S. – Home addresses, telephone numbers, and other specified personal information of current or former public guardians and employees with fiduciary responsibility, as defined in the exemption, as well as the names and specified information about the spouses and children of these individuals are exempt from disclosure. An agency that is the custodian of the information shall maintain the exempt status only if the specified individuals submit a written request for exempt status to the custodial agency.

Section 744.2104(2) F.S. – All records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness, are confidential and exempt from public disclosure requirements.

Section 744.2105(6), F.S. – Personal identifying information of a donor or prospective donor of funds or property to the direct-support organization of the Office of Public and Professional Guardians who wishes to remain anonymous is confidential and exempt.

Section 744.2111(1)(2)(3), F.S. – A complaint and any information held by the Department of Elderly Affairs as part of the investigative process are confidential and exempt until the investigation is completed or ceases to be "active, as that term is defined in the exemption. However, once the investigation is completed or ceases to be active, specified personal information relating to complainants or wards remains confidential. The exemption does not prohibit the department from providing such information to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of court under s. 744.368, or pursuant to court order.

Section 744.3701, F.S. – Unless otherwise ordered by the court, upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or any record relating to the settlement of a claim is subject to inspection only by the individuals specified in the section. Court records relating to the settlement of a ward's or minor's claim are confidential and exempt and may not be disclosed except as specifically authorized.

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), 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 confidential and exempt as provided in the exemption.

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).

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 784.046(4)(b), F.S. – A petitioner seeking an injunction for protection against repeat violence, sexual violence or dating violence and related court actions may furnish an 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 pursuant to s. 119.071(2)(j).

Section 784.0485(3)(b), F.S. – A petitioner seeking an injunction for protection against stalking may furnish his or her address to the court in a separate confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.

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 787.06(10), F.S. – Information about the location of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity, which is held by an agency is confidential and exempt; however, the information may be disclosed as provided in the exemption.

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 held by the Division of Licensing of the Department of Agriculture and Consumer Services or by a tax collector appointed by the Department to receive applications and fees 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 790.0625(4), F.S. – All personal identifying information that is provided pursuant to s. 790.06 and contained in the records of a tax collector appointed under this section is confidential and exempt except as provided in s. 790.0601.

Section 790.065(2)(a)4.d., F.S. – The hearing on the petition filed by a 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)(a), 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, a governmental agency or any other person, public or private, may not 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 815.045, F.S. – It is a public necessity that trade secret information as defined in s. 812.081, 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 895.06(2), F.S. – A subpoena issued pursuant to this chapter is confidential for 120 days after the date of its issuance. The subpoenaed person or entity may not disclose the existence of the subpoena to any person or entity other than his or her attorney during the 120-day period.

Section 895.06(7), F.S. – Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt; however, the information may be disclosed as provided in the subsection. Information made confidential and exempt under this exemption is no longer confidential and exempt once all investigations to which the information pertains are completed, as defined in the exemption, unless the information is otherwise protected by law.

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 916.1065(1), F.S. – A forensic behavioral health evaluation filed with the court pursuant to Ch. 916, is confidential and exempt.

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, if any person under 16 or any person with an intellectual disability 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. – If 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 932.703(2)(e), F.S. –The court may seal any portion of the application and the record of any proceeding under the Florida Contraband Forfeiture Act which is exempt or confidential and exempt from disclosure requirements or may otherwise be sealed pursuant to Rule 2.420, Florida Rules of Judicial Administration.

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 943.053(3), F.S. – Criminal history information relating to a juvenile and compiled by the Criminal Justice Information Program from intrastate sources is confidential and exempt except as provided in the exemption.

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 943.0582(5), F.S. – Nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential. Disclosure is authorized as provided in the exemption.

Section 943.0583(10)(a), F.S. – A criminal history record of a human trafficking victim that is ordered expunged under this section that is retained by the Florida Department of Law Enforcement is confidential and exempt except that the record shall be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties; or by court order.

Section 943.0583(11)(12), F.S. – Criminal intelligence information or criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged or has been expunged under s. 943.0583 is confidential and exempt. Disclosure is authorized under specified circumstances. A petition filed under this section and all documents related to the petition are confidential and exempt.

Section 943.0585(6), 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(6)(d), 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(6)(a), 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 persons and entities identified in the subsection.

Section 943.059(6)(d), 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. *See also* s. 943.0595(3)(b).

Section 943.082(6), F.S. – The identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Department of Law Enforcement, Department of Education, law enforcement agencies, or school officials is confidential and exempt. Any other information received through the tool and held by such agencies is exempt.

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 shall be released only to criminal justice agencies as defined in s. 943.045, F.S., at the request of the agency. Otherwise, such information is confidential and exempt.

Section 943.68(10)(a), F.S. – Records held by a law enforcement agency relating to security or transportation services provided under ss. 943.68(1),(5), or (6) to the Governor and other specified persons are exempt from disclosure requirements.

Section 943.687(8), F.S. – Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential information is discussed is exempt from open meetings requirements.

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, F.S. – Records of the Department of Corrections relating to inmates and other specified persons and entities, 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 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 may 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 and hepatitis 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 exempt 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 statute 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 985.534(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 (juvenile justice) 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 1002.221, F.S. – Education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations, are confidential and exempt. An agency or institution, as defined in s. 1002.22, may not release a student's education records without the written consent of the student or parent except as provided in the exemption and as permitted by FERPA.

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.

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)(x), F.S. – 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 1002.42(18)(c), F.S. – Any information that may identify whether a particular individual has been assigned as a safe-school officer pursuant to s. 1006.12 at a private school and that is held by a law enforcement agency is exempt from disclosure requirements.

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 1002.97, F.S. – Except as provided in the exemption, individual records of children enrolled in school readiness programs, held by a VPEP provider, an early learning coalition or the Department of Education are confidential and exempt.

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)(c), F.S. – Hearings on exceptional student identification, evaluation, and eligibility determination, or lack thereof, 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 1004.055, F.S. – Certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed security incidents are confidential and exempt. Those portions of a public meeting which would reveal such data and information are exempt from s. 286.011, F.S.

Section 1004.0962(2) and (5), F.S. – A campus emergency response, as defined in the exemption, held by a public postsecondary institution or specified agencies is exempt from disclosure requirements. That portion of a public meeting which would reveal a campus emergency response is exempt from s. 286.011, F.S.

Section 1004.098(1), F.S. – Personal identifying information of an applicant for president of a state university or a Florida College System institution held by a state university or college is confidential and exempt, except that the age, race, and gender of all applicants who met the minimum qualifications established for the position who were considered and the personal identifying information of an applicant included in the final group of applicants, are no longer confidential and exempt beginning at the earlier of the date the final group of applicants to be considered is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of employment of an applicant as president.

Section 1004.098(2), F.S. – Any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution, including any portion of a meeting which would disclose personal identifying information of such applicants which is otherwise confidential and exempt under s. 1004.098(1) is exempt from open meetings requirements. A complete recording must be made of any portion of a meeting which is closed and the closed portion may not be held off the record. The recording of the closed portion is exempt. The exemption does not apply to portions of meetings held to establish qualifications for the position or for establishing any compensation framework to be offered to an applicant, or to any meeting held after a final group of applicants has been established.

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 1004.28(5), F.S. – Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of private funds for travel, all records of a university direct-support organization 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. Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S.

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 1004.55(6), F.S. – Records that relate to the client of a regional autism center are confidential and exempt from public disclosure. Personal identifying information of a donor or prospective donor who desires to remain anonymous is also confidential.

Section 1004.70(6), F.S. – Records of a Florida College System institution direct-support organization 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 Florida College System 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 Florida College System institution are confidential and exempt from s. 119.07(1) provided that an institution 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 1006.12(8), F.S. – Any information held by listed agencies that would identify whether an individual has been appointed as a safe-school officer is exempt.

Section 1006.1493, F.S. – In accordance with s. 119.071(3)(a), data and information related to security risk assessments administered pursuant to cited statutes and the security information contained in the annual report required pursuant to s. 1006.1493(4), are confidential and exempt.

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 1008.23(1), 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.

Section 1008.23(2), F.S. – All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered by a Florida College System institution, a state university, or the Department of Education shall be confidential and exempt.

Section 1008.24(4)(b), F.S. – The identity of a school or postsecondary educational institution, personal identifying 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 1008.39(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 reemployment assistance wage 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 1009.987, F.S. – The personal financial and health information of a consumer (defined as a party to a participation agreement) held by the Florida Prepaid College Board, Florida ABLE Inc., or the Florida ABLE program relating to an ABLE account or participation agreement or any information that would identify a consumer is confidential and exempt. Disclosure is authorized in specified circumstances.

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(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 (educator certification) 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 maintained by a Florida College System institution on its employees. Such limited-access records may include only the records described in the section. Limited access records are confidential and exempt and may not be released except 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 and may not be released except as authorized in the section.

Section 1012.9931, F.S. – Any portion of a meeting of the Interstate Teacher Mobility Compact Commission or its executive committee in which specified information is discussed is exempt from open meetings requirements. Recordings, minutes, and records generated during any portion of an exempt meeting are exempt. Records relating to an investigation of a teacher received from another member state held by the Commissioner of Education or the Department of Education pursuant to the Compact are exempt from disclosure requirements until such time as the investigation ceases to be "active," as defined in the exemption, or until such time as a preliminary investigation has been concluded with a finding that there is probable cause to proceed and a complaint is filed.

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. 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 s. 24, Art. I of the State Constitution.

F. TABLE OF APPELLATE CASES (GOVERNMENT- IN-THE-SUNSHINE LAW AND THE PUBLIC RECORDS ACT) NOTE: This listing includes federal cases and Florida appellate (i.e., District Court of Appeal or Supreme Court) cases cited in the Sunshine Manual; the complete text of cited Florida county court and circuit court cases is available online at the Office of the Attorney General website: myfloridalegal.com.

(s) Denotes case cited in Part I, Sunshine Law

(pr) denotes case cited in Part II, Public Records Act

Agrosource, Inc. v. Florida Department of Citrus, 148 So. 3d 138 (Fla. 2d DCA 2014) (pr)

Alice P. v. Miami Daily News, Inc., 440 So. 2d 1300 (Fla. 3d DCA1983), *review denied,* 467 So. 2d 697 (Fla. 1985) (pr)

Allen v. United Faculty of Miami-Dade College, 197 So. 3d 604 (Fla. 3d DCA 2016) (s)

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) (pr)

Alterra Healthcare Corporation v. Estate of Shelley, 827 So. 2d 936 (Fla. 2002) (pr)

Althouse v. Palm Beach County Sheriff's Office, 89 So. 3d 288 (Fla. 4th DCA 2012) (pr)

Althouse v. Palm Beach County Sheriff's Office, 92 So. 3d 899 (Fla. 4th DCA 2012) (pr)

Alvarez v. Reno, 587 So. 2d 664 (Fla. 3d DCA 1991) (pr)

Anderson v. City of St. Pete Beach, 161 So. 3d 548 (Fla. 2d DCA 2014) (s)

Arbelaez v. State, 775 So. 2d 909 (Fla. 2000) (pr)

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) (pr)

Askew v. City of Ocala, 348 So. 2d 308 (Fla. 1977) (s)

Atkins v. State, 663 So. 2d 624 (Fla. 1995) (pr)

Atwell v. Sacred Heart Hospital of Pensacola, 520 So. 2d 30 (Fla. 1988) (pr)

B & L Service, Inc. v. Broward County, 300 So. 3d 1205 (Fla. 4th DCA 2020) (pr)

B & S Utilities, Inc. v. Baskerville-Donovan, Inc. 988 So. 2d 17 (Fla. 1st DCA 2008), *review denied,* 4 So. 3d 1220 (Fla. 2009) (pr)

B.B. v. Department of Children and Family Services, 731 So. 2d 30 (Fla. 4th DCA 1999) (pr)

Baker v. Florida Department of Agriculture and Consumer Services, 937 So. 2d 1161 (Fla. 4th DCA 2006), *review denied,* 954 So. 2d 27 (Fla. 2007) (s)

Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So. 2d 189 (Fla. 1st DCA 2004) (s), (pr)

B.M.Z. Corporation v. City of Oakland Park, 415 So. 2d 735 (Fla. 4th DCA 1982) (s)

Barfield v. City of Fort Lauderdale Police Department, 639 So. 2d 1012 (Fla. 4th DCA), *review denied,* 649 So. 2d 869 (Fla. 1994) (pr)

Barfield v. City of Tallahassee, 171 So. 3d 239 (Fla. 1st DCA 2015) (pr)

Barfield v. Doe, 348 So. 3d 1156 (Fla. 4th DCA 2022) (pr)

Barfield v. School Board of Manatee County, 135 So. 3d 560 (Fla. 2d DCA 2014) (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)

Bennett v. Clerk of Circuit Court Citrus County, 150 So. 3d 277 (Fla. 5th DCA 2014) (pr)

Bennett v. Warden, 333 So. 2d 97 (Fla. 2d DCA 1976) (s)

Bent v. State, 46 So. 3d 1047 (Fla. 4th DCA 2010) (pr)

Bevan v. Wanicka, 505 So. 2d 1116 (Fla. 2d DCA 1987) (pr)

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Bivens v. Tony, 368 So. 3d 16 (Fla. 4th DCA 2023) (pr)

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Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969) (s)

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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) (pr)

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Boyles v. Mid-Florida Television Corp., 431 So. 2d 627 (Fla. 5th DCA 1983), *approved*, 467 So. 2d 282 (Fla. 1985) (pr)

Braddy v. State, 219 So. 3d 803 (Fla. 2017) (pr)

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Broward County v. Conner, 660 So. 2d 288 (Fla. 4th DCA 1995), *review denied,* 669 So. 2d 250 (Fla. 1996) (s)

Brown v. City of Lauderhill, 654 So. 2d 302 (Fla. 4th DCA 1995) (s)

Brown v. Denton, 152 So. 3d 8 (Fla. 1st DCA 2014) (s)

Brown v. State, 152 So. 3d 739 (Fla. 4th DCA 2014) (pr)

Browning v. Walton, 351 So. 2d 380 (Fla. 4th DCA 1977) (pr)

Bruckner v. City of Dania Beach, 823 So. 2d 167 (Fla. 4th DCA 2002) (s)

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Buchanan v. Miami Herald Publishing Company, 206 So. 2d 465 (Fla. 3d DCA 1968), *modified*, 230 So. 2d 9 (Fla. 1969) (pr)

Bundy v. State, 455 So. 2d 330 (Fla. 1984), *cert. denied,* 106 S. Ct. 1958 (1986) (s)

Burton v. Oates, 362 So. 3d 311 (Fla. 5th DCA 2023) (s)

Butler v. City of Hallandale Beach, 68 So. 3d 278 (Fla. 4th DCA 2011) (pr)

Butterworth v. Smith, 110 S.Ct. 1376 (1990) (s), (pr)

Buxton v. City of Plant City, Florida, 871 F.2d 1037 (11th Cir. 1989) (pr)

CA Florida Holdings, LLC v. Aronberg, 360 So. 3d 1149 (Fla. 4th DCA 2023) (pr)

Campus Communications, Inc. v. Earnhardt, 821 So. 2d 388 (Fla. 5th DCA 2002), *review denied,* 848 So. 2d 1153 (Fla. 2003) (pr)

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City of Miami v. Metropolitan Dade County, 745 F. Supp. 683 (S.D. Fla. 1990) (pr)

City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971) (s)

City of Miami Beach v. DeLapp, 472 So. 2d 543 (Fla. 3d DCA 1985) (pr)

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Parsons & Whittemore, Inc. v. Metropolitan Dade County, 429 So. 2d 343 (Fla. 3d DCA 1983) (pr)

Paylan v. Office of the State Attorney for the Thirteenth Circuit, 310 So. 3d 459 (Fla. 2d DCA 2020) (pr)

Pinellas County School Board v. Suncam, Inc., 829 So. 2d 989 (Fla. 2d DCA 2002) (s)

Potts v. State, 869 So. 2d 1223 (Fla. 2d DCA 2004) (pr)

Port Everglades Authority v. International Longshoremen's Association, Local 1922-1, 652 So. 2d

1169 (Fla. 4th DCA 1995) (s)

Post-Newsweek Stations, Florida Inc. v. Doe, 612 So. 2d 549 (Fla. 1992) (pr)

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) (pr)

Pritchett v. State, 566 So. 2d 6 (Fla. 2d DCA), *review dismissed,* 570 So. 2d 1306 (Fla. 1990) (s)

Promenade D'Iberville, LLC v. Sundy, 145 So. 3d 980 (Fla. 1st DCA 2014) (pr)

Puls v. City of Port St. Lucie, 678 So. 2d 514 (Fla. 4th DCA 1996) (pr)

Putnam County Humane Society v. Woodward, 740 So. 2d 1238 (Fla. 5th DCA 1999) (pr)

Quad-City Community News Service, Inc. v. Jebens, 334 F. Supp 8 (S.D. Iowa 1971) (s)

Radford v. Brock, 914 So. 2d 1066 (Fla. 2d DCA 2005) (pr)

Ragsdale v. State, 720 So. 2d 203 (Fla. 1998) (pr)

Rameses, Inc. v. Demings, 29 So. 3d 418 (Fla. 5th DCA 2010) (pr)

Ramese's, Inc. v. Metropolitan Bureau of Investigation, 954 So. 2d 703 (Fla. 5th DCA 2007) (pr)

Rasier-DC, LLC v. B & L Service, Inc., 237 So. 3d 374 (Fla. 4th DCA 2018) (pr)

Rea v. Sansbury, 504 So. 2d 1315 (Fla. 4th DCA), *review denied,* 513 So. 2d 1063 (Fla. 1987) (pr)

Rhea v. District Board of Trustees of Santa Fe College, 109 So. 3d 851 (Fla. 1st DCA 2013) (pr)

Rhea v. City of Gainesville, 574 So. 2d 221 (Fla. 1st DCA 1991) (s)

Rhea v. School Board of Alachua County, 636 So. 2d 1383 (Fla. 1st DCA 1994) (s)

Ribaya v. Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa, 162 So. 3d 348 (Fla. 2d DCA 2015) (s)

Roberts v. Butterworth, 668 So. 2d 580 (Fla. 1996) (pr))

Roberts v. News-Press Publishing Company, Inc., 409 So. 2d 1089 (Fla. 2d DCA), *review denied,* 418 So. 2d 1280 (Fla. 1982) (pr)

Roesch v. State, 633 So. 2d 1 (Fla. 1993) (pr)

Roldan v. City of Hallandale Beach, 361 So. 3d 348 (Fla. 4th DCA 2023) (pr)

Rogers v. Hood, 906 So. 2d 1220 (Fla. 1st DCA 2005), *review denied,* 919 So. 2d 436 (Fla. 2005) (pr)

Rogers v. State, 271 So. 3d 79 (Fla. 3d DCA 2019) (pr)

Rose v. D'Alessandro, 380 So. 2d 419 (Fla. 1980) (pr)

Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984) (s)

Ruff v. School Board of Collier County, 426 So. 2d 1015 (Fla. 2d DCA 1983) (s)

Rush v. High Springs, 82 So. 3d 1108 (Fla. 1st DCA 2012) (pr)

Salameh v. Florida Department of Health, 325 So. 3d 349 (Fla. 1st DCA 2021) (pr)

Salcines v. Tampa Television, 454 So. 2d 639 (Fla. 2d DCA 1984) (pr)

Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755 (Fla. 2010) (s)

Sarasota Herald-Tribune Company v. Community Health Corporation, Inc., 582 So. 2d 730 (Fla. 2d DCA 1991) (pr)

Sarasota Herald-Tribune v. State, 916 So. 2d 904 (Fla. 2d DCA 2005) (pr)

Sarasota Herald-Tribune v. State, 924 So. 2d 8 (Fla. 2d DCA 2005), *review denied,* 918 So. 2d 293 (Fla. 2005), *pet. for cert. dismissed,* 126 S. Ct. 1139 (2006) (pr)

Satz v. Blankenship, 407 So. 2d 396 (Fla. 4th DCA 1981), *review denied,* 413 So. 2d 877 (Fla. 1982) (pr)

Satz v. Gore Newspapers Company, 395 So. 2d 1274 (Fla. 4th DCA 1981) (pr)

School Board of Alachua County v. Rhea, 661 So. 2d 331 (Fla. 1st DCA 1995), *review denied,* 670 So. 2d 939 (Fla. 1996) (s)

School Board of Duval County v. Florida Publishing Company, 670 So. 2d 99 (Fla. 1st DCA 1996) (s)

Schwartzman v. Merritt Island Volunteer Fire Department, 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied,* 358 So. 2d 132 (Fla. 1978) (pr)

Schweickert v. Citrus County Florida Board, 193 So. 3d 1075 (Fla. 5th DCA 2016) (pr)

SCI Funeral Services of Florida, Inc. v. Light, 811 So. 2d 796 (Fla. 4th DCA 2002) (s)

S*cott v. Lee County School Board*, 310 So. 3d 163 (Fla. 2d DCA 2021) (pr)

S*cott v. Thompson,* 4326 So. 3d 123 (Fla.1st DCA 2021) (pr)

Seigle v. Barry, 422 So. 2d 63 (Fla. 4th DCA 1982), *review denied,* 431 So. 2d 988 (Fla. 1983) (pr)

Seminole County, Florida v. Wood, 512 So. 2d 1000 (Fla. 5th DCA 1987), *review denied,* 520 So. 2d 586 (Fla. 1988) (pr)

Sepro Corporation v. 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) (pr)

Seta Corporation of Boca, Inc. v. Office of the Attorney General, 756 So. 2d 1093 (Fla. 4th DCA 2000) (pr)

Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980) (pr)

Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018) (pr)

Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997) (s)

Sireci v. State, 587 So. 2d 450 (Fla. 1991), *cert. denied,* 112 S.Ct. 1500 (1992) (s)

Skeen v. D'Alessandro, 681 So. 2d 712 (Fla. 2d DCA 1995) (pr)

Smith v. State, 696 So. 2d 814 (Fla. 2d DCA 1997) (pr)

Smith v. State, 335 So. 3d 795 (Fla. 2d DCA 2022) (pr)

Smith & Williams, P.A. v. West Coast Regional Water Authority, 640 So. 2d 216 (Fla. 2d DCA 1994) (pr)

Smithwick v. Television 12 of Jacksonville, Inc., 730 So. 2d 795 (Fla. 1st DCA 1999) (pr)

Southern Bell Telephone & Telegraph Company v. Beard, 597 So. 2d 873 (Fla. 1st DCA 1992) (pr)

Southern Coatings, Inc. v. City of Tamarac, 916 So. 2d 19 (Fla. 4th DCA 2005) (pr)

Southwestern Newspapers Corporation v. Curtis, 584 S.W.2d 362 (Texas App. 1979) (s)

Spillis Candela & Partners, Inc. v. Centrust Savings Bank, 535 So. 2d 694 (Fla. 3d DCA 1988) (s)

Stanfield v. Florida Department of Children and Families, 698 So. 2d 321 (Fla. 3d DCA 1997) (s)

Stanfield v. Salvation Army, 695 So. 2d 501 (Fla. 5th DCA 1997) (s); (pr)

State v. Buenoano, 707 So. 2d 714 (Fla. 1998) (pr)

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

State v. Coca-Cola Bottling Co. of Miami, Inc., 582 So. 2d 1 (Fla. 4th DCA 1990) (pr)

State v. Globe Communications Corporation, 648 So. 2d 110 (Fla. 1994) (pr)

State v. Ingram, 170 So. 3d 727 (Fla. 2015) (pr)

State v. Johnson, 814 So. 2d 390 (Fla. 2002) (pr)

State v. Knight, 661 So. 2d 344 (Fla. 4th DCA 1995) (pr)

State v. Kokal, 562 So. 2d 324 (Fla. 1990) (pr)

State v. Natson, 661 So. 2d 926 (Fla. 4th DCA 1995) (pr)

State v. Schenecker, No. 11-CF-001376A (Fla. 13th Cir. Ct. August 3, 2011), *certiorari denied sub. nom., Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA September 16, 2011) (pr)

State v. Webb, 786 So. 2d 602 (Fla. 1st DCA 2001) (pr)

State v. Wright, 803 So. 2d 793 (Fla. 4th DCA 2001), *review denied,* 823 So. 2d 125 (Fla. 2002) (pr)

State v. Wooten, 260 So. 3d 1060 (Fla. 4th DCA 2018) (pr)

State Attorney's Office, Seventeenth Judicial Circuit v. Cable News Network, Inc., 251 So. 3d 205 (Fla. 4th DCA 2018) (pr)

State Attorney's Office, Seventeenth Judicial Circuit v. Cable News Network, Inc., 254 So. 3d 461(Fla. 4th DCA 2018) (pr)

State, Department of Economic Opportunity v. Consumer Rights, LLC, 181 So. 3d 1239 (Fla. 1st

DCA 2015) (pr)

State, Department of Financial Services v. Danahy & Murray, 246 So. 3d 466 (Fla. 1st DCA 2018) (pr)

State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy, 636 So. 2d 1377 (Fla. 1st DCA 1994) (pr)

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) (pr)

State, Department of Highway Safety and Motor Vehicles v. Kropff, 445 So. 2d 1068 (Fla. 3d DCA 1984) (pr)

State, Department of Management Services v. Lewis, 653 So. 2d 467 (Fla. 1st DCA 1995) (s)

State ex rel. Christian v. Rudd, 302 So. 2d 821 (Fla. 1st DCA 1974) (s)

State ex rel. Clayton v. Board of Regents, 635 So. 2d 937 (Fla. 1994) (pr)

*State ex rel. Cummer v. Pace, 1*59 So. 679 (Fla. 1935) (pr)

State ex rel. Davidson v. Couch, 156 So. 297 (Fla. 1934) (pr)

State ex rel. Davidson v. Couch, 158 So. 103 (Fla. 1934) (pr)

State ex rel. Davis v. McMillan, 38 So. 666 (Fla. 1905) (pr)

State ex rel. Miami Herald Publishing Company v. McIntosh, 340 So. 2d 904 (Fla. 1977) (s) (pr)

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) (pr)

Staton v. McMillan, 597 So. 2d 940 (Fla. 1st DCA 1992), *review dismissed sub nom., Staton v.Austin*, 605 So. 2d 1266 (Fla. 1992) (pr)

Stern v. City of Miami Beach, 359 So. 3d 1209 (Fla. 3d DCA 2023) (pr)

Stone v. Ward, 752 So. 2d 100 (Fla. 2d DCA 2000) (pr)

U.S. v. Story County, Iowa, 28 F. Supp. 3d 861, 872 (S.D. Iowa 2014) (pr)

Sun-Sentinel, Inc. v. Florida Department of Children and Families, 815 So. 2d 793 (Fla. 3d DCA 2002) (pr)

Surterra Florida, LLC v. Florida Department of Health, 223 So. 3d 376 (Fla. 1st DCA 2017) (pr)

Tal-Mason v. Satz, 614 So. 2d 1134 (Fla. 4th DCA), *review denied,* 624 So. 2d 269 (Fla. 1993) (pr)

Tampa Television, Inc. v. Dugger, 559 So. 2d 397 (Fla. 1st DCA 1990) (pr)

The Florida Bar, In re Advisory Opinion Concerning the Applicability of Ch. 119, F.S., 398 So. 2d 446 (Fla. 1981) (pr)

Thompson v. Napotnik, 923 So. 2d 537 (Fla. 5th DCA 2006)

Times Publishing Co. v. Ake, 660 So. 2d 255 (Fla. 1995) (pr)

Times Publishing Co. v. A.J., 626 So. 2d 1314 (Fla. 1993) (pr)

Times Publishing Co. v. City of St. Petersburg, 558 So. 2d 487 (Fla. 2d DCA 1990) (pr)

Times Publishing Co. v. Patterson, 451 So. 2d 888 (Fla. 2d DCA 1984) (pr)

Times Publishing Co. v. State, 827 So. 2d 1040 (Fla. 2d DCA 2002) (pr)

Times Publishing Co. v. State, 903 So. 2d 322 (Fla. 2d DCA 2005) (pr)

Times Publishing Co. v. Williams, 222 So. 2d 470 (Fla. 2d DCA 1969) (s)

Timoney v. City of Miami Civilian Investigative Panel, 917 So. 2d 885 (Fla. 3d DCA 2005) (pr)

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) (pr)

Tolar v. School Board of Liberty County, 398 So. 2d 427 (Fla. 1981) (s)

Town of Gulf Stream v. O'Boyle, 654 Fed. Appx. 439 (11th Cir. 2016) (pr)

Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974) (s) (pr)

Tracy v. State, 219 So. 3d 958 (Fla. 1st DCA 2017) (pr)

Transparency for Florida, Inc. v. City of Port St. Lucie, 240 So. 3d 780 (Fla. 4th DCA 2018) (s)

Trepal v. State, 704 So. 2d 498 (Fla. 1997) (pr)

Tribune Company v. Cannella, 438 So. 2d 516 (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) (pr)

Trout v. Bucher, 205 So. 3d 876 (Fla. 4th DCA 2016) (pr)

TSI Southeast, Inc. v. Royals, 588 So. 2d 309 (Fla. 1st DCA 1991) (s)

Turner v. Wainwright, 379 So. 2d 148 (Fla. 1st DCA 1980), *affirmed and remanded,* 389 So. 2d 1181 (Fla. 1980) (s) (pr)

Valle v. State, 705 So. 2d 1331 (Fla. 1997) (pr)

Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied,* 94 S.Ct. 1564 (1974) (pr)

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) (pr)

Wagner v. Orange County, 960 So. 2d 785 (Fla. 5th DCA 2007) (pr)

Wait v. Florida Power & Light Company, 372 So. 2d 420 (Fla. 1979) (pr)

Wallace v. Guzman, 687 So. 2d 1351 (Fla. 3d DCA 1997) (pr)

Walton v. Dugger, 634 So. 2d 1059 (Fla. 1993) (pr)

Weekly Planet v. Hillsborough County Aviation Authority, 829 So. 2d 970 (Fla. 2d DCA 2002) (pr)

Warden v. Bennett, 340 So. 2d 977 (Fla. 2d DCA 1976) (pr)

Weeks v. Golden, 764 So. 2d 633 (Fla. 1st DCA 2000) (pr)

Weeks v. Golden, 846 So. 2d 1247 (Fla. 1st DCA 2003) (pr)

Wells v. Aramark Food Service Corporation, 888 So. 2d 134 (Fla. 4th DCA 2004) (pr)

Wells v. Sarasota Herald Tribune Company, Inc., 546 So. 2d 1105 (Fla. 2d DCA 1989) (pr)

WFTV, Inc. v. Robbins, 625 So. 2d 941 (Fla. 4th DCA 1993) (pr)

WFTV, Inc. v. School Board of Seminole County, Florida, 874 So. 2d 48 (Fla. 5th DCA 2004), *review denied,* 892 So. 2d 1015 (Fla. 2004) (pr)

WFTV, Inc. v. Wilken, 675 So. 2d 674 (Fla. 4th DCA 1996) (pr)

Wilkinson v. State Attorney's Office, 345 So. 3d 925 (Fla. 3d DCA 2022) (pr)

Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991), *review denied,* 589 So. 2d 289 (Fla. 1991), *appeal after remand,* 619 So. 2d 983 (Fla. 5th DCA 1993) (pr)

Williams v. State, 741 So. 2d 1248 (Fla. 1999) (pr)

Williams v. State, 163 So. 3d 618 (Fla. 4th DCA 2015) (pr)

Winter v. Playa del Sol Inc., 353 So. 2d 598 (Fla. 4th DCA 1977) (pr)

Wisner v. City of Tampa, 601 So. 2d 296 (Fla. 2d DCA 1992) (pr)

Wolfson v. State, 344 So. 2d 611 (Fla. 2d DCA 1977) (s)

Woliner v. Florida Department of Health, 320 So. 3d 774 (Fla. 4th DCA 2021) (pr)

Wood v. Marston, 442 So. 2d 934 (Fla. 1983) (s)

Woodard v. State, 885 So. 2d 444 (Fla. 4th DCA 2004) (pr)

Woodfaulk v. State, 935 So. 2d 1225 (Fla. 5th DCA 2006) (pr)

Woolling v. Lamar, 764 So. 2d 765 (Fla. 5th DCA 2000), *review denied,* 786 So. 2d 1186 (Fla. 2001) (pr)

Wootton v. Cook, 590 So. 2d 1039 (Fla. 1st DCA 1991) (pr)

WPTV-TV v. State, 61 So. 3d 1191 (Fla. 5th DCA 2011) (pr)

Wright v. State, 324 So 3d 1282 (Fla. 1st DCA 2021) (pr)

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) (pr)

Yarbrough v. Young, 462 So. 2d 515 (Fla. 1st DCA 1985) (s)

Yasir v. Forman, 149 So. 3d 107 (Fla. 4th DCA 2014) (pr)

Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 4th DCA 1998), *review denied,* 735 So. 2d 1284 (Fla. 1999) (s)

INDEX TO MANUAL AND EXEMPTIONS **Page**

ABLE program, financial and health information
Exemption: 1009.987 305

Abortion requests by minors, parental notification waiver petitions 16
Exemptions: 390.01114(6)(f); 390.01116; 390.01118 259

Abstention from voting 49-50, 211

Adoption records and proceedings 73-74
Exemptions: 63.022(4)(i); 63.0541; 63.162; 63.165(1) 231

Advisory committees, application of open government laws

Criminal justice advisory committees 20
Exemptions: 286.01141; 943.031(9)(c) and (d); 943.0314 ....211, 297

Generally 1-3, 57-58

Personnel advisory committees 34

Purchasing advisory committees 35-36, 48
Exemption: 286.0113(2) 208-209

Real estate advisory committees 36, 57

School advisory committees 2-5, 19, 20, 58

Advocacy councils, investigatory proceedings and records 52-53
Exemptions: 402.165(8); 402.166(8) 265

Aging, agencies on, application of open government laws 17-18, 61

Accessibility of public meetings to physically handicapped 41

Agendas for public meetings 40

Aggravated battery and aggravated stalking victims, addresses 78-79, 121-123
Exemption: 119.071(2)(j) 237

Agriculture and Consumer Services, Department of; inspectors and investigators 144-154
Exemption: 119.071(4)(d)2.v. 239

Agricultural processing or production records relating to pollution reduction
Exemption: 403.067(7)(c)5. 265

Agriculture Center and Horse Park Authority, donor identities
Exemption: 570.686 280

Airport security plans and operating facility documents
Exemption: 331.22 252-253

Alcoholic beverage licenses, random selection drawing results
Exemption: 561.19(2)(b) 280

Alien business organization proceedings
Exemptions: 607.0505(6); 617.0503(6) 281

Alternate board members, application of Sunshine Law 22

Alzheimer's disease

Research and care programs, identity of clients

Exemption: 430.504 270

Research grant applications, advisory board
Exemptions: 381.82(3)(d) 257

Amusement ride investigations
Exemption: 616.242(14)(b) 281

Anatomical gift donor registry, donor identifying information
Exemption: 765.51551 293

Animal medical records held by state college of veterinary medicine
Exemption: 474.2167 276

Animal researchers, personal identifying information
Exemption: 585.611(1) 281

Annuities for public employees....135
Exemption: 112.21(1) 233-234

Anonymous requests for records....168

Antitrust investigation demand products
Exemption: 542.28(9) 279

Applications for employment, generally....135

Applications for presidency of postsecondary institution, records, and meetings.....34, 135
Exemption: 1004.098 302

Aquaculture records
Exemption: 597.0042. 281

Arbitration, application of attorney-client exemption 29

Archaeological site location
Exemption: 267.135 247

Architecture and Interior Design, Board of; complaints and investigation
Exemption: 481.205(3)(a)....276

Archival materials under special restrictions
Exemption: 257.38(4)....247

Arrest reports, *see also* criminal investigative and intelligence information..... 101-102

Attorney records and litigation meetings

Attorney notes 132-133

Attorney work product 127-131, 176, 196
Exemptions: 119.071(1)(d); 119.0714(1)(a), 627.3121(1)(j) 220, 235, 284

Insurance claim negotiation records....132
Exemption: 624.311(2)....280

Litigation settlement negotiation or strategy session meetings.... 26-31
Exemption: 286.011(8).... 207-208

Risk management records and meetings.... 31, 131-132
Exemptions: 284.40(2); 768.28(16)(b)(c); 1004.24(4)..... 248, 293-294, 303

Attorney's fees in open government cases.... 198-199

Auditor General, audit workpapers....88
Exemption: 11.45(4)(c)....227
Audits or investigations for local governments....88-89, 99-100, 180
Exemption: 119.0713(2)(b)....241
Autism clients
Exemption: 1004.55(6)....304
Autopsy reports....74, 103, 108
Exemption: 406.135(2)(b)....78
Autopsy photographs....74
Exemption: 406.135(2)....266
Bail bond agents
Exemptions: 648.26(3); 648.34(3); 648.39(1); 648.41; 648.46(3)....287-288
Baker Act....95, 111
Exemptions: 394.4615(1), (8)....260
Ballots
Ballots cast at public meetings....49-51
Ballots cast by voters in elections....79, 82-83
Exemptions: 101.62(3); 119.07(5)....232, 218
Bank account numbers in possession of governmental entity....92
Exemptions: 119.071(5)(b); 119.0714(1)(j), (2), (3)....239, 220, 221-222
Banks, stockholder lists
Exemptions: 655.057(2), (8)....289
Bids, records and meetings, *see* competitive solicitations
Biomedical research grants and peer review meetings
Exemptions: 215.56021; 381.92201....257
Birth center records
Exemptions: 383.32(3); 383.325....258
Birth records....73, 181
Exemptions: 382.013(4)(5); 382.017(1); 382.025(1)-(4)....258
Birth-Related Neurological Injury Compensation Association records
Exemptions: 766.305(3); 766.314(8); 766.315(5)(b)....293
Blind Services, Division of; records identifying blind persons
Exemption: 413.012(1)....268
Body camera recordings....111
Exemption: 119.071(2)(l)....237
Bond ownership records....91
Exemption: 279.11(1)....248
Booking business records, public facilities....91
Exemption: 255.047(2)....247
Boxing Commission, proprietary information

Exemption: 548.062(2) 279

Brain research and spinal cord injury records
Exemptions: 381.775; 381.8531 257

Budgets 90

Building plans, blueprints, and diagrams 156
Exemptions: 119.071(3)(b)(c)(d) 238

Business and Professional Regulation, Department of; investigators and inspectors, personal information 144-154
Exemption: 119.071(4)(d)2.m 239

Cameras and tape recorders at public meetings 48

Campaign finance reports and investigatory proceedings
Exemptions: 106.0706(1)(2); 106.25(7) 232

Campus emergency response 157
Exemption: 1004.0962(2) 302

Candidates, application of Sunshine Law 6

Candidate forums, application of Sunshine Law 22

Capital development board, donor identities
Exemption: 11.45(3)(j) 227

Canvassing boards 82-83
Ballots 82-83
Minutes 43, 80-81, 197

Charter schools 81

Child abuse records and reports 66, 75-76, 122-125
Exemptions: 39.101(3)(b); 39.202(1), (2)(o), (5), (6); 39.301(18); 92.56; 119.071(2)(h)(j) 229, 231-232, 237

Child care facilities and programs
Exemptions: 119.071(5)(c); 409.175(12) 239, 267

Child death information, website publication 76

Child death review committee 43
Exemption: 383.412 258-259

Child advocacy center employees, personal information 144-154
Exemption: 119.071(4)(d)2.t. 239

Child protection team members, personal information 144-154
Exemption: 119.071(4)(d)2.t. 239

Child support hearing officers, personal information 144-154
Exemption: 119.071(4)(d)2.e. 239

Child support recipients
Exemption: 61.1827 230

Child traffic violation records 116

Child welfare proceedings
Exemptions: 39.0132(3), (4)(a)1.; 39.507; 39.809(4). 228, 229

Children participating in government-sponsored recreation programs....82
Exemption: 119.071(5)(c)....239

Children and Families, Department of; information exchanged with Department of Health....94

Children and Families, Department of; investigators personal information.... 144-154
Exemption: 119.071(4)(d)2.a....239

Children at risk of becoming serious habitual juvenile offenders, information
Exemption: 985.047(2)(a)....301

Children's services, councils on; child or parent identifying information
Exemption: 125.901(11)....242

Cities, authority to hold joint meetings with county or city governing bodies....42

Citizen Dispute Settlement Centers, dispute information
Exemption: 44.201(5)....230

Citizen support organizations (*see also* direct support organizations)

Division of Historical Resources
Exemption: 267.17(3)....247

Fish and Wildlife Conservation Commission
Exemption: 379.223(3)....256

Publication of information on agency website....77

Citizens Property Insurance Corporation
Exemptions: 627.351(6)(x); 627.3518(11); 627.352....284, 285

Citrus records
Exemption: 601.10(8)....281

Clemency records and meetings....6-7, 72-73
Exemption: 14.28....227

Codes, use at public meetings....49

Code enforcement officers, personal information....144-154
Exemption: 119.071(4)(d)2.g....239

Collective bargaining....31-32, 55, 90, 135-136, 189
Exemptions: 110.201(4); 447.605(1), (3)....233, 271, 272

College Savings Program, account information
Exemption: 1009.981(6)....305

Commercial entity, authority to make public records requests....164

Commercialization of Florida Technology, Institute for
Exemption: 288.9627(2)(3)....250

Communicable disease reports....94
Exemptions: 381.0031(6); 395.1025....256, 261

Community care for disabled adults, identity of clients
Exemption: 410.605....268

Community care for elderly persons, identity of clients

Exemption: 430.207 270

Community colleges, See Florida College System institutions

Community forums, application of Sunshine Law....22

Community mental health centers, quality assurance
Exemption: 394.907(7) 260

Competitive solicitation, bids, proposals, or replies 35-36, 89-90, 129
Exemptions: 119.071(1)(b); 119.0713(3);
286.0113(2); 337.168 ....235, 241, 208, 258

Communications services records submitted to Department of Economic Opportunity
Exemption: 119.071(1)(h) 236

Competitive solicitation, construction bids 89

Competitive solicitation, financial statements....89
Exemption: 119.071(1)(c)....235

Computer records and meetings, *see* electronic records and meetings

Concealed weapon licensees or license applicants, identifying information 93-94
Exemptions: 790.0601; 790.0625(4)....294

Confessions of arrested persons 111-112
Exemptions: 119.071(2)(e); 119.0714 (1)(e)....220, 236

Confidential informant or source, identification.... 112-113, 174
Exemptions: 119.071(2)(f); 119.0714(1)(f); 925.055(2) 220, 236, 296

Confidential information, release by clerk of court 67-68

Confidentiality agreements, authority to enter into 173-174

Conservation easement acquisitions, appraisal reports
Exemption: 570.715(5)....281

Constitutional commissions, application of open government laws 6, 72-73

Consumer collection practices, examination and investigations
Exemption: 559.5558(2) 279-280

Consumer Services, division of; customer and trade secret information
Exemption: 570.544(8)....279

Continuing care contracts; reports, examinations, and investigations
Exemptions: 651.105(3); 651.111(2); 651.134 288

Conviction integrity unit reinvestigation information
Exemption: 119.071(2)(q) 113

Copyrighted records, public records status.... 183-184

Corporations, information provided to Department of Legal Affairs
Exemption: 607.0505(6)....281

Correctional officers, examinations of
Exemption: 943.173(3)....299

Correctional officers, investigations concerning.... 136-138
Exemptions: 112.532(4)(b); 112.533(2)(a); 943.1395(6)(b) 235, 298-299

Correctional officers, personal information 144-154
Exemption: 119.071(4)(d)2.a. 239

Corrections, Department of; prison records and information 119-120
Exemption: 945.10 299

Cosmetics; complaints, investigative information
Exemption: 499.051(7)(a)(b) 277-278

Costs and fees to obtain public records 184-191, 198-201, 216-218

County addiction treatment facility employees, personal information 144-154
Exemption: 119.071(4)(d)2.s. 239

County commissions, meeting with counties and cities 42

County health departments
Exemption: 381.0055 ..... 256, 257

County tax collectors, personal information 144-145
Exemption: 119.071(4)(d)2.n 239

Court monitors, court orders and reports 76-77
Exemption: 744.1076 291-292

Credit card numbers in possession of governmental agency 91-92
Exemptions: 119.071(5)(b); 119.0714(1)(j), (2), (3) 220, 222, 239

Credit history information
Exemptions: 288.075(7), 494.00125(3) 249, 277

Credit union member lists
Exemption: 655.057(7) 289

Crime victim compensation records
Exemption: 960.15 300

Crime victim identities or personal information 121-126
Exemptions: 119.071(2)(h)(i)(j)(m)(o); 406.135; 877.19(3);
945.10; 960.28(4) 236, 266, 295, 299, 300

Crime victim relocation information 126
Exemption: 914.27 296

Crime victim testimony 16
Exemption: 918.16 296

Crime victim solicitation 122
Exemption: 119.105 224

Criminal conflict and civil regional counsels, personal information 144-154
Exemption: 119.071(4)(d)2.j. 239

Criminal history information, generally 113-114

Criminal history records, expunction or sealing 114
Exemptions: 943.053; 943.0582(5); 943.0585; 943.059 ..... 297, 298

Criminal history records used in employment screening 140-141
Exemptions: 110.1127(2)(d)(e); 393.0674; 409.175(12); 409.176(12);
435.09;464.208(2); 943.0585(6); 943.059(6);

1002.36(7)(d) 232, 260, 266, 270, 274, 298, 301

Criminal intelligence and investigative information

Generally..... 101-110

Exemption: 119.071(2)(c).....236

Identity of human trafficking victim whose criminal history record has been expunged.....114

Exemption: 943.0583(11)(a).....298

Information received by criminal justice agency before 25 January, 1979.....110

Exemption: 119.071(2)(a).....236

Investigations by non law enforcement agencies..... 97-101

Non-Florida criminal justice agency information.....104, 110

Exemption: 119.071(2)(b) 236

Research and statistical use

Exemption: 943.057 297-298

Unlawful disclosure by public servant 102

Criminal justice advisory commissions 20

Exemption: 286.01141 211

Criminal penalties

Sunshine Law 53

Public Records Act..... 201-202

Cultural endowment program, identity of donors

Exemption: 265.605(2) 247

Currency transaction reports

Exemptions: 517.12(14); 896.102(2) 278, 295

Custodian of public records..... 68, 162-166, 168-176, 202-205, 213-220

Cybersecurity, see electronic records

Damages, authority to obtain for violation of open government laws 58, 194, 225

Data breach notification, information received by Department of Legal Affairs

Exemption: 501.171(11) 278

Data privacy investigations, information received by Department of Legal Affairs

Exemptions: 501.1735(6), 501.722.....278

Deaf and the Blind, School for; employee screening information 140-141

Exemption: 1002.36(7)(d) 301

Death and fetal death records 74-75

Exemptions: 382.008(6); 382.025(2)(3)(4)..... 255, 256, 257-258

Death sentence execution identification information.....120

Exemption: 945.10 299

Deceptive and unfair trade practice intelligence or investigative information

Exemption: 501.2065 278

Declaratory relief
Sunshine Law 56
Public Records Act....194
Defense Support Task Force
Exemption: 288.985 250
Deferred compensation plans for public employees, account records 141
Exemption: 112.215(7) 234
Deferred presentment providers and drawers, identifying information
Exemption: 560.4041 280
Dental practitioners, records and reports involving
Exemptions: 466.022(3); 466.0275(2); 466.041(3)....275
Depositions, access to....69
Development Finance Corporation bonds, applicant information
Exemption: 288.9607(5) 250
Developmentally disabled persons, service providers, employee screening information
Exemption: 393.0674 260
Direct deposit records
Exemption: 17.076(5) 141
Direct-support organizations (*see also* citizen-support organizations)
Agriculture and Consumer Services, Department of 77
Exemption: 570.691(6) 81
District school boards 19, 77
Exemption: 1001.453(4) 301
Education, Department of
Exemption: 1001.24(4) 301
Endowment Foundation for Vocational Rehabilitation
Exemption: 413.615(7)(a)(b) 268
Florida College System institutions....78
Exemptions: 1004.70(6); 1004.71(6) 304
Florida, University of, historic preservation
Exemption: 267.1736(9) 248
Generally 19, 77-78
Performing arts center
Exemption: 265.7015 77
Prepaid College Board
Exemption: 1009.983(4) 305
Publication of information on agency website....77
Public and Professional Guardians, Office of
Exemption 744.2105(6) 292
Ringling Museum of Art....19, 77

Exemption: 1004.45(2)(h) 303-304
State universities 19, 77-78
Exemption: 1004.28(5) 303
Tourism Marketing Corporation
Exemptions: 288.1226(7) 249
Veterans' Affairs, Department of 19
Exemption: 292.055(9) 250
West Florida, University of, historic preservation
Exemption: 267.1732(8) 248
Disability registry enrollment information 97
Exemption: 402.88(4)(a) 265
Disabled adults receiving home care services, identifying information
Exemption: 410.037 268
Disadvantaged business enterprises, certification information
Exemption: 339.0805(1)(c) 253
Discovery of exempt or confidential records 181-182
Discrimination complaints and records 98-99
Exemptions: 119.071(2)(g) (n); 119.0713(1) 236, 237, 241
Disposal of public records 202-205, 214-215
Dissolution of marriage, mediation proceedings
Exemption: 61.183(3) 230
DNA analysis information
Exemptions: 760.40(2); 943.325(14) 292, 299
DNA investigative genetic genealogy information 114
Exemption: 119.071(2)(r) 238
Domestic Security and Counter-Terrorism Intelligence Center information
Exemption: 943.0321(4) 297
Domestic Security Oversight Council
Exemption: 943.0314 297
Domestic violence centers 78
Exemption: 39.908 230
Domestic violence, petitions for injunction for protection 78
Exemption: 119.0714(1)(k) 220-221
Domestic violence fatality review teams 79
Exemption: 741.3165 291
Domestic violence police reports, victim/witness statements 122-123
Exemption: 741.29(2) 290-291
Domestic violence victims 78-79, 83, 115, 122-123
Exemptions: 119.071(2)(j); 406.135(2)(b); 741.30(3), (8); 741.313(7);
741.465; 787.03(6)(c)1 ..... 237, 291, 294
Domestic violence victim advocates 144-154

Exemption: 119.071(4)(d)2.u. 239
Drafts and notes, generally 79-81
Driver license number 82, 118-119
Exemptions: 97.0585, 119.0712(2)(b) 232-240
Driver physical or mental disability reports
Exemptions: 322.125(3)(4); 322.126(3) 252
DROP participants 155
Drug dependent newborns, guardian advocate appointment proceedings 16
Exemption: 39.827(4) 230
Drugged racing animals; test results and identities of animal, owner, and trainer
Exemption: 550.2415(1)(a) 279
Drugs
Compassionate use registry
Exemptions: 381.987(1)(2) 257
Complaints, investigative information
Exemption: 499.051(7) 277-278
Employee drug testing information 141
Exemptions: 112.0455(8)(t), (11)(a);
440.102(8); 443.1715(1),(3)(b) 233, 270, 271
Medicaid supplemental rebates
Exemption: 409.91196(1) 267
Petitions for involuntary assessment and stabilization 95-96
Exemption: 397.6760(1) 263
Prescription drug monitoring program information
Exemption: 893.0551(2) 295
Substance abuse treatment and services programs 95-96, 141-142
Exemptions: 110.1091(2); 125.585(2); 166.0444; 397.334(10); 397.4103(5);
397.501(7); 397.752 ....232, 242, 243, 263
Dues, public funds used for 66
Economic development records and meetings 90-91
Exemption: 288.075 249
Education Practices Commission, records and meetings 46
Elderly Affairs, Department of, investigations
Exemption: 744.2111(1) 292
Elderly persons receiving services, identifying information
Exemptions: 430.105; 430.608 269-270
Election of officers, application of Sunshine Law 26, 50
Elections Commission, complaints and investigations
Exemption: 106.25(7) 232
Electric projects, due diligence review information

Exemption: 119.0713(4) 241
Electronic records and meetings
Blogs, application of Sunshine Law 24
Cybersecurity, records and meetings 36-37
Exemptions: 119.0712(2)(f); 119.0713(5)(a); 119.0725(2); 282.318; 286.0113; 627.352; 1004.055; 1004.0962 ..... 240, 241, 248, 208, 285, 302
Data processing software 83-84
Exemptions: 119.071(1)(f); 119.0714(1)(b) 236, 220
E-mail addresses 85, 87, 93, 119
Exemptions: 15.16(3); 119.071(5)(j); 119.0712(2)(c);197.3225 .... 227, 239, 240, 244
E-mail communications
Sunshine Law 23-24, 57
Public records 85-86, 133-135
Facebook
Sunshine Law 24
Public records 85, 134, 203
Judicial electronic records 67
Public records status, generally 59, 83-86
Retention 83-86, 203
Risk analysis and security issues, see cybersecurity
Secure login credentials held by Commission on Ethics
Exemption: 112.31446(6)(a) 234
Secure login credentials held by Department of Highway Safety and Motor Vehicles 158
Exemption: 119.0712(2)(f 240
Secure login credentials held by Department of State
Exemption: 15.16(3)(c) 227
Text messages 85-86, 133-134, 197, 203
Twitter 85
Virtual meetings, quorum requirements 37-40
Emergency records and meetings
Disaster recovery assistance 88
Exemption: 119.071(5)(f)1.b 239
Discussions with staff 26
Emergency 911, caller information 86-87
Exemption: 365.171(12) 254
Emergency evacuation registration, persons with special needs 87
Exemption: 252.355(4) 246
Emergency evacuation plans 87
Exemption: 119.071(3)(a) 304

Emergency medical services, call records 96-97
Exemption: 401.30(4) 264
Emergency medical services quality assurance activities
Exemption: 401.425(5) 264-265
Emergency medical technicians, disciplinary investigative information
Exemption: 401.414(3) 264
Emergency medical technicians, personal information 144-154
Exemption: 119.071(4)(d)2.g. 239
Emergency meetings of public boards, notice requirements 44-45
Emergency notification records 87-88
Exemptions: 119.071(5)(j); 119.0712(2)(d) 239, 240
Emergency plans furnished to Division of Emergency Management 87
Exemption: 252.905 246
Emergency response plans 88, 120
Exemption: 119.071(2)(d) 236
Emergency shelter information 88
Exemption: 252.385(5) 246
Eminent domain proceedings, business information
Exemption: 73.0155 231
Eminent domain, use of by executive agencies
Exemption: 119.0711 240
Employee assistance program identifying information 142
Exemptions: 110.1091(2); 125.585(2); 166.0444 ..... 232, 242, 243
Employment search or consultant records 142
Endowment Foundation for Vocational Rehabilitation
Exemptions: 413.615(7)(a)(b), (11) 268
Energy resources reports, proprietary information
Exemption: 377.606 255
Engineers Management Corporation
Exemption: 471.038(7) 275
Enterprise Florida
Exemption: 288.002 249
Environmental Protection, Department of 174
Exemptions: 377.075(4)(f); 403.111 ..... 255, 265
Estate inventories and accountings
Exemption: 733.604(1)(b) 290
Ethics complaints and investigations 26, 99
Exemption: 112.324(2) 232-235
Examinations for licensure, certification, or employment 143-144
Exemption: 119.071(1)(a) 235
Executive Clemency, Board of; investigations 72-73

Exemption: 14.28 225
Execution records 120
Exemption: 945.10(1)(g)(j) 299
Exemptions from disclosure
Creation of 177-178
Definition 177, 214
Difference between exempt and confidential records 181-182
Discovery, effect on 181-182
Retroactive application 179
Strict construction of 51-52, 178-179
Ex officio board members, application of Sunshine Law 6-7
Export Finance Corporation loans, applicant financial information
Exemption: 288.776(3)(d) 249
Facebook, application of open government laws 24, 85
Fact finding or inspection trips 24-25
Fair association 1, 61
False Claims Act investigations
Exemption: 68.083(8) 249
Family trust company
Exemptions: 662.1465; 662.148(2) 289, 290
Federal agencies and statutes
Application of Sunshine Law to federal government 7
Application of federal statutes to agency records 182-184
Federal employer identification numbers 91, 223
Exemption: 288.075 249
Fees to inspect or copy public records 184-191, 216-218
Financial disclosure, electronic filing
Exemption: 112.31446 234
Financial information submitted to agencies, generally 92
Financial institution records
Cease and desist order proceedings
Exemption: 655.0321 288
Depositories of public funds
Exemptions: 280.16(3); 655.057 ....248, 289
Direct deposit records 141
Exemption: 17.076(5) 227
Investigative information
Exemption: 655.057(1) 288
Informal enforcement action investigations

Exemption: 655.057(3) 289
Money laundering control records and reports
Exemption: 655.50(7) 289
Reports of examinations, operations, or condition
Exemption: 655.057(2) 289
Financial Regulation, Office of, information held by 92
Exemptions: 119.0712(3); 494.00125(1)(2)(3); 517.2015; 517.2016; 520.9965; 559.952(5); 560.312; 655.057; 655.50(7) 240, 277, 278, 280, 288-289
Financial Services, Department of; investigative information
Exemption: 17.0401; 624.319(3) 227, 282
Financial Services, Department of; investigative personnel information 144-154
Exemption: 119.071(4)(d)2.b. 239
Financial statements, submitted in commercial solicitation 89-90
Exemption: 119.071(1)(c) 235
Financial statements, mine operators
Exemption: 378.208(5) 256
Fingerprints 114
Exemptions: 119.071(5)(g); 937.028(1); 985.11 ..... 239, 297, 301
Fire Marshall investigation records and meetings
Exemption: 633.112(7) 286
Fire prevention personnel, examination information
Exemption: 633.324 286
Firearms sales or transfers, license records information 93-94
Exemption: 790.065(4) 294
Firefighters, personal information 144-154
Exemption: 119.071(4)(d)2.d. 239
Firesafety system plans 156-158
Exemption: 119.071(3)(a) 238
Florida Bar, application of open government laws to 69
Florida College System institution records and meetings 77-78, 81-82, 143
Exemptions: 1004.055(1); 1004.098; 1004.78(2); 1006.52(1); 1008.24(3)(b); 1012.81 ..... 302, 304, 306
Florida Retirement System, retiree information 155
Exemptions: 121.031(5); 121.4501(19) 241, 242
Food safety or food illness investigative information
Exemption: 500.148(3) 278
Forensic behavioral health evaluations
Exemption: 916.1065(1) 296
Foster care 76-77

Exemptions: 39.702(5), 409.175(16) 229, 266
Funeral, Cemetery, and Consumer Services, Board of
Exemption: 497.172 277
Gaming Control Commission
Exemption: 16.716; 550.0251(9) 227, 279
Geolocation information, law enforcement 114
Exemption: 119.071(4)(e) 239
Geophysical operations, proprietary information 174
Exemptions: 377.22(2)(h); 377.2408(3); 377.2409;
377.2421(2); 377.2424(3) 255
Gestational surrogacy, affirmation of parental status hearing records
Exemption: 742.16(9) 291
Government efficiency toll-free hotline calls
Exemption: 17.325(3) 227
Governor and Cabinet, application of open government laws to 72-73
Governor's executive order assigning state attorney
Exemption: 27.151 228
Grand juries 14, 70-71
Exemptions: 905.17(1); 905.26; 905.27(1)(2); 905.28(1) 295-296
Grievance committees 32-33
Guardian ad litem
Applicants, security background investigative information
Exemption: 39.821(1) 230
Child welfare information
Exemption: 39.0132(4)(a)2. 228
Personal information 146
Exemption: 119.071(4)(d)2.j. 239
Guardianship court settlement records
Exemption: 744.3701 292
H. Lee Moffitt Cancer Center and Research Institute nonprofit corporation
Exemption: 1004.43(8)(9) 303
Hate crime victims, identities
Exemption: 877.19(3) 295
Hazardous materials facilities, site plans and location of hazardous chemicals
Exemption: 252.88 246
Hazardous or toxic substances, proprietary information
Exemptions: 252.88(2)(3); 403.111 ..... 246, 266
Health Care Administration, Agency for
Exemptions: 395.0193(4); 395.0197;

408.061(1)(d), (7), (8), (10) 261, 266

Health care community antitrust no-action letter requests, supporting information
Exemption: 408.185 266

Health care discrimination based on health care choices, complaints and investigations
Exemption: 381.00318 256

Health care facilities, adverse incident reports
Exemptions: 395.0197(6)(c), (7), (13) 261

Health care facilities, building plans 156
Exemptions: 119.071(3)(c) 238

Health care facilities, risk management records and meetings
Exemptions: 395.0197(14) 261

Health care practitioner profiles, confidential data
Exemption: 456.046 273

Health care provider identity, proprietary information
Exemption: 408.061(10) 266

Health, Department of

Investigative personnel, personal information 144-154
Exemptions: 119.071(4)(d)2.a, o 239

Personal identifying information in health records 95-96
Exemption: 119.0712(1) 240

Practitioner profile patient information
Exemption: 456.046 273

Quality assurance records and meetings
Exemption: 381.0055(1)-(3) 257

Health maintenance organizations
Exemption: 408.185 266

Healthy start coalitions
Exemption: 381.0055 257

Highway Safety and Motor Vehicles, Department of,
motor vehicle records 117-119, 191
Exemption: 119.0712(2) 240

Highway Safety and Motor Vehicles, investigations
Exemptions: 319.1414, 319.25, 320.861)5), 322.71(5) 251, 252

Home care for disabled adults, identity of clients
Exemption: 410.037 268

Home care for elderly persons, identity of clients
Exemption: 430.608 270

Home health agency information
Exemption: 400.494(1) 264

Home improvement sellers, investigative information
Exemption: 520.9965 278

Home medical equipment providers, patient information
Exemption: 400.945 264

Home warranty associations, examination or investigation records
Exemption: 634.348 2874

Homelessness counts and data, individual information
Exemption: 420.6231 269

Homeowners associations, application of open government laws 20, 64

Homicide victims and witnesses 103, 104, 126
Exemptions: 119.071(2)(m), (o)(p); 406.135; 237, 266

Hospice patient records
Exemption: 400.611(3) 264

Hospitals

Adverse incident reports,
Exemption: 395.0197(7) 261

Budgets 90

Employee limited access records 97
Exemption: 395.3025(9)-(11) 262

Generally 94-97

Inspection reports
Exemption: 395.0162(2) 261

Medical staff disciplinary proceedings
Exemption: 395.0193(4)(7) 261

Patient care quality assurance, trauma care
Exemptions: 395.3025; 395.4025(13); 395.51; 401.30 ....262, 263, 264

Patient records 95-96
Exemptions: 395.3025(4)(7)(a), (8); 395.4025(13) 262, 263

Private hospitals 95
Exemption: 395.3036 261

Public hospitals 94
Exemptions: 395.1056; 395.3035 ....261, 262

Terrorism response plans 87
Exemption: 395.1056 261

House museums, donor information
Exemption: 267.076 247

Housing assistance program participant information 88, 182
Exemption: 119.071(5)(f) 239

Housing discrimination complaints and records 98-99
Exemptions: 119.0713(1); 760.34(1); 760.36 ....241, 242

Human and Machine Cognition, Inc., Institute for
Exemption: 1004.4472 303

Human Immunodeficiency Infection Virus (HIV) test results 16, 94
Exemptions: 381.004; 951.27(2) 256, 299

Human Relations, Commission on; discrimination complaints and records
Exemptions: 760.11(12); 760.34(1) 292

Human trafficking victims 103, 126
Exemptions: 119.071(2)(h); 787.06(10); 943.0583(11), (12)(a) 237, 294, 298

Impaired practitioner consultants, personal information 144-154
Exemption: 119.071(4)(d)2.p 239

Impaired professionals, treatment information
Exemptions: 310.102(3)(5); 456.076(13);
1012.798(9)(11) 250, 273, 306

Independent college or university records
Exemption: 1008.24(4)(b) 305

Independent Education, Commission for
Exemption: 1005.38(6) 304

Individual board members, application of Sunshine Law 8-12

Injunctive relief

Sunshine Law 55-56

Public Records Act 193-194

Inspection trips 25

Inspectors general personnel, personal information 144-154

Exemption: 119.071(4)(d)2.r. 239

Inspector general for local government, investigations 99

Exemption: 119.0713(2) 241

Insurance records

Administrative supervision of insurers
Exemption: 624.82(1) 282

Agent credit and character reports
Exemption: 626.842(3) 283

Agent disciplinary hearing information
Exemption: 626.631(2) 283

Agent termination reports
Exemptions: 626.511(3); 626.8433(3) 283

Automobile Joint Underwriting Association
Exemption: 627.311(4)(a)(b) 284

Citizens Property Insurance Corporation
Exemption: 627.351(6)(x); 627.3518(11); 627.352 ..... 284, 285

Claim data exchange information 267
Exemption: 409.25661

Claim negotiations 132
Exemption: 624.311(2) 282
Consumer information 92
Exemption: 624.23 281
Dependent child of agency officers or employees, personal information 144-154
Exemption: 119.071(4)(b) 239
Emergency cease and desist orders
Exemption: 624.310(3)(f) 282
Examination and investigation reports and workpapers
Exemption: 624.319(3) 282
Fraud investigations
Exemption: 626.989 283-284
Guaranty Associations, *see also* Self-Insurers Guaranty Association
Exemptions: 631.398(1); 631.582; 631.62; 631.723; 631.724;
631.931; 631.932 285-286
Health Choices Program information
Exemption: 408.910(14) 266
Holding companies
Exemption: 628.801(4) 285
Hurricane Catastrophe Fund, reports
Exemptions: 215.555(4)(f); 215.557 246
Hurricane loss data
Exemption: 627.06292(1) 284
Hurricane Loss Projection Methodology, Commission on
Exemption: 627.0628(3)(g) 284
Insolvency reports and recommendations
Exemptions: 631.398(1); 631.62(2)(3); 631.723(1)(3) 285-286
Insurance anti-fraud reports
Exemption: 626.9891(11)(a) 284
Investigative information and complaints against personnel
Exemptions: 626.601(6); 634.201(3); 634.348; 634.444 ..... 283, 286, 287
Liability insurer annual claim reports, claimant names
Exemption: 627.9126(3)(a) 285
Life insurers, actuarial opinion on reserves
Exemption: 625.121(3)(a)9 283
Lists of insurers or regulated companies
Exemption: 624.319(3) 282
Medical malpractice, Joint Underwriting Association claim files
Exemption: 627.351(4)(g) 284
Motor vehicle personal injury protection and property damage liability policies
Exemption: 324.242 252

Motor vehicle service agreement company guaranteeing organization filings
Exemption: 634.045(5) 286
Motor vehicle service agreement company salespersons, investigative information
Exemption: 634.201(3) 286
Officers' and directors' liability insurance claims reports, names of injured persons
Exemption: 627.9122(2)(e) 285
Own-risk and solvency assessment summary reports
Exemption: 624.4212(3) 282
Pharmacy benefit managers
Exemptions: 624.319 283
Professional liability claim reports
Exemptions: 456.051(1); 627.912(2)(e) 273
Proprietary business information
Exemption: 624.4212(2) 285
Receiver, Department of Financial Services acting as
Exemption: 631.195 285
Risk-based capital information
Exemption: 624.40851(1)(2) 282
Service warranty association guaranteeing organization filings
Exemption: 634.4065(5) 287
Small employer health insurance carriers, rating and renewal information
Exemption: 627.6699(8)(c) 285
State programs 132
Exemption: 284.40(2) 248
State university Board of Governors, self-insurance claims files 132
Exemption: 1004.24(4) 303
Surplus lines agents
Exemption: 626.921(8) 283
Title insurance, proprietary information
Exemption: 626.84195(2) 283
Trade secrets, insurance administrators
Exemption: 626.884(2) 283
Valuation of policies and contracts
Exemption: 625.1214(1) 283
Workers' Compensation Joint Underwriting Association
Exemption: 627.3121 284
Internal audit department personnel, personal information 144-154
Exemption: 119.071(4)(d)2.r. 239
Internal auditor reports for local governments, audit notes and workpapers 88-89
Exemption: 119.0713(2) 241
Interlocal boards, application of open government laws....1, 39, 60

International trust companies
Exemption: 663.416(2)(3) 290
Inventories of estates
Exemption: 733.604(1)(b) 290
Investigation records of non-law enforcement agencies 97-101
Investment information held by State Board of Administration
Exemption: 215.4401(1)(2)(3) 245
Jai alai fronton investigative information
Exemption: 550.0251(9) 279
Judges, judicial assistants, and magistrates, personal information 144-154
Exemption: 119.071(4)(d)2.e., g.; 119.071(5)(i) 239
Judicial records and proceedings 12-16, 66-71, 191
Judicial nominating commissions 14, 70
Judicial Qualifications Commission proceedings 14, 69-70
Juries
Grand juries 14, 70-71
Exemptions: 905.17(1); 905.26; 905.27(1)(2); 905.28(1) 295, 296
Jury notes
Exemption: 40.50(2) 230
Jury selection information 71
Exemption: 322.20(9) 252
Trial juries 71
Juvenile probation and detention personnel, personal information 144-154
Exemption: 119.071(4)(d)2.k 239
Juvenile records and proceedings
Criminal history information 117
Employment screening, records used for 115, 117
Exemption: 435.09 270
Expunged and sealed records
Exemption: 943.0582(5) 298
Fingerprints and photographs taken by law enforcement agencies 115
Exemption: 985.11
Generally 115-117
Juvenile proceedings and appeals
Exemptions: 985.04; 985.045(2); 985.534(4)(5) 300, 301
Juvenile welfare boards, child or parent identifying information
Exemption: 125.901(11) 242
Serious habitual juvenile offenders
Exemption: 985.047(2)(a) 301

Traffic violations 116
Kidcare Program, identifying information
Exemption: 409.821 267
Killing of law enforcement officer; photographs, videos, or audio recording 74, 125
Exemption: 119.071(2)(p) 238
Killing of minor; photographs, videos, or audio recording 125
Exemption: 119.071(2)(p) 238
Killing of victim of mass violence; photographs, videos, or audio recording 74, 125
Exemption: 119.071(2)(p) 238
Law enforcement agency audits, identity of informants
Exemption: 925.055(2) 296
Law enforcement agency, transportation or security services records held by 121-156
Exemption: 943.68(10)(a) 299
Law Enforcement, Department of; public misconduct, investigatory records
Exemption: 943.03(2) 297
Law enforcement officers, examinations of
Exemption: 943.173(3) 299
Law enforcement, geolocation information 114
Exemption: 119.071(4)(e)
Law enforcement officers, investigations concerning 136-139
Exemptions: 112.532(4)(b); 112.533(2)(a); 943.1395(6)(b) 235, 298-299
Law enforcement, Marsy's Law 121
Law enforcement personnel, personal information 121, 144-154
Exemption: 119.071(4)(d)2.a. 239
Law enforcement resource inventories and emergency plans 120
Exemptions: 119.071(2)(d); 119.0714(1)(d) 220, 236
Legislative committee, access to child abuse records 76
Legislative employees, requests for services by legislators 72
Exemption: 11.26(1) 226
Legislative meetings and records generally 1, 7-8, 16-17, 72, 181-182
Exemption: 11.0431(2) 226
Library and Information Services, Division of; records
Exemption: 257.38(2)-(4) 247
Library registration and circulation records 180
Exemption: 257.261 247
Lifeline Assistance Plan participants, personal identifying information
Exemption: 364.107 254
Liquefied petroleum gas
Exemptions: 527.0201(8); 527.062(1) 279
Lobbyists, investigative information 99
Exemption: 112.3215(8)(b) 234

Local government audits 88-89
Exemption: 119.0713(2) 241
Long-term care ombudsman councils, complaints and residents' records
Exemption: 400.0077(1)(2) 262-263
Lottery, department of
Exemptions: 24.1051(1)(2)(3); 24.108(7)(b) 227-228
Magistrate, application of Sunshine Law 4, 11
Magistrates, personal information 147, 144-154
Exemptions: 119.071(4)(d)2.g.; 119.071(5)(i) 239
Married couple, application of Sunshine Law 17
Marsy's Law 121
Mayor, application of Sunshine Law 3, 8-9, 20, 30
Mediation records and proceedings 11, 15, 23, 29, 56, 193, 196
Exemptions: 44.102(3); 61.183(3) 230
Medicaid investigative information
Exemptions: 409.910(17)(i); 409.913(12) 267
Medicaid Pharmaceutical and Therapeutics Committee
Exemption: 409.91196(1)(2) 267
Medical devices, complaints, investigative information
Exemption: 499.051(7) 277-278
Medical Examiners Commission investigations and proceedings
Exemption: 406.075(3)(b) 265
Medical or storage facility identifying information
Exemption: 381.95(1) 257
Medical records
Ambulatory surgical centers 95-96
Exemptions: 395.3025(4), (7)(a), (8), (9) 262
Animal records
Exemption: 474.2167 276
Assisted living facilities
Exemptions: 400.0077(1), (2) 263-264
Cancer registry reports
Exemption: 385.202(3) 259
County health departments
Exemption: 381.0055(1)-(3) 256-257
Dental practitioners, hepatitis B virus carriers; status reports
Exemption: 466.041(3) 275
Developmentally disabled persons, central records 95
Exemption: 393.13(4)(i) 260
Emergency medical services 96-97

Exemptions: 401.30(4); 401.425(5) 264

Employers providing health or life insurance benefits, medical condition of public employee 155
Exemption: 760.50(5) 293

Health care access program
Exemption: 766.1115(4)(c) 293

Health Care Administration, Agency for; records obtained by
Exemptions: 408.061(9),(10) 266

Health care practitioners, generally 95-96
Exemptions: 456.057(7)(a),(9) 273

Health, Department of; records obtained by
Exemptions: 381.0055(1)-(3); 456.046 ....256, 273

Health maintenance organizations
Exemptions: 641.515(2); 287

Hepatitis test results 94
Exemption: 960.003(3) 300

HIV test results 94
Exemptions: 381.004(2)-(5); 945.10; 960.003(3) 256, 300

Home health agencies
Exemption: 400.494(1) 264

Hospices
Exemption: 400.611(3) 264

Hospital patient records 95-96
Exemptions: 395.3025(4)(7)(a)(8) 262

Housing assistance program participants 92
Exemption: 119.071(5)(f) 239

Impaired educators
Exemptions: 1012.798(9), (11) 306

Impaired practitioners, generally
Exemptions: 456.076(13) 273

Inmates of detention facilities, serological tests for infectious diseases 94
Exemption: 951.27(2) 299

Insurance Guaranty Association, claim files
Exemption: 631.582 285

Joint underwriting association employees
Exemptions: 627.311(4)(a); 627.351(4)(g); 627.351(6)(x) 284

Medical incident reports, health care facilities
Exemptions: 395.0197(6)(c), (7), (13), (14); 641.55(5), (6), (8) 261, 287

Medical marijuana personal identifying information
Exemption: 381.987(1)(2) 257

Medical negligence claimants, presuit examination reports
Exemption: 766.106(6)(b)3 293

Medical research information
Exemption: 405.03 265

Mental health patients 95, 111
Exemptions: 394.4615(1)(7);394.464; 394.467(6)(a)3.; 916.107(8) 260, 296

Newborns, risk factor screening reports and case registry
Exemption: 383.14(3)(d) 258

Nursing home residents 95
Exemptions: 400.0077(1)(2); 400.022(1)(m) 263, 264

Osteopathic physician practice violations, seized records
Exemption: 459.018 274

Patient care quality assurance
Exemptions: 381.0055(1)-(3); 395.3025(4), (7)(a), (8);
395.4025(12); 395.51(1)(2)(3); 401.425(5) 257, 262, 263, 264

Patient identifying information 95, 154-155
Exemptions: 119.071(4)(b); 119.0712(1) 238, 240

Pharmacy records
Exemption: 465.017(3) 274-275

Physician practice violations, seized records
Exemption: 458.341 274

Pregnancy termination reports
Exemption: 390.0112(3) 259

Prepaid health clinics
Exemption: 641.515(2) 287

Prepaid limited health service organizations
Exemption: 636.064(1)-(3) 287

Professional license applicants
Exemptions: 455.229; 456.014 272

Psychology interjurisdictional compact
Exemption: 490.0076(1)(2) 276

Public officers and employees 154-155
Exemptions: 110.123(10); 112.08(7), (8);119.071(4)(b);
760.50(5);1012.31(3) 233, 238, 293, 305

Rural health networks 61
Exemption: 381.0055(1)-(3) 256, 257

School students
Exemption: 381.0056(4)(a) 257

Sexually transmissible diseases 94
Exemptions: 381.004(2)-(5); 384.26(2); 384.29; 384.30(2);

960.003(3) 256, 259, 300

Substance abuse treatment records and proceedings, see drugs

Trauma care
Exemptions: 395.3025(4), (7)(a), (8); 395.4025(13); 401.30(3)(4) 262, 263, 264

Tuberculosis control
Exemptions: 392.54(2); 392.545(3); 392.65 260

Veterans' Domiciliary Home of Florida residents
Exemption: 296.09(1) 250

Workers' compensation claims, treatment records
Exemption: 440.125 270

Workers' compensation managed care arrangements
Exemption: 440.132 270

Medical review committee records and meetings

Corrections, Department of
Exemptions: 766.101(7)(c); 945.6032(3) 293, 299

Emergency medical review committees
Exemption: 401.425(5) 264

Generally
Exemption: 766.101(7)(c) 293

Medical staff disciplinary proceedings
Exemption: 395.0193(7) 261

Trauma agencies, committees assisting
Exemptions: 395.3025; 395.51(1)-(3); 401.30(3)(4) 262, 263, 264

Medical transportation services, investigatory records
Exemption: 401.414(3) 264

Members-elect, application of open government laws 1, 6, 203, 206, 215-216

Memory disorder research and care programs, identity of clients
Exemption: 430.504 270

Military base realignment and closure records
Exemption: 288.985 250

Mine operators and processes
Exemptions: 377.075(4)(f); 378.406(1)(a) 255, 256

Minutes of public meetings 42-43, 56, 80, 171, 172, 197, 206

Mobile home park financial records
Exemption: 723.006(3) 290

Money services businesses
Exemption: 560.129 280

Mortgage brokers and mortgage lenders
Exemption: 494.00125(1)-(3) 277

Motor fuel marketing practices, investigations
Exemption: 526.311(2) 279

Motor vehicle records

Crash reports 117-119, 191
Exemption: 316.066(2) 251

Driver disability reports and meetings
Exemptions: 322.125(3)(4); 322.126(3) 252

Driver history records
Exemption: 322.20(3) 252

Driver license number 83, 118-119
Exemption: 97.0585(1); 119.0712(2)(b); 316.650(11) 232, 240, 251

Driver license photographic negatives or digital reproductions
Exemption: 322.142(4) 252

Emergency contact information, release 87-88, 119
Exemption: 119.0712(2)(d) 240

Fees for Department of Highway Safety and Motor Vehicles crash reports 191

Generally 117-119

License plate automated recognition system images and data 117
Exemption: 316.0777(2)(3) 251

License plates and registration issued under fictitious names
Exemption: 320.025(3) 251

Personal information 117-119
Exemption: 119.0712(2) 240

Personal injury protection and property damage liability insurance policies
Exemption: 324.242 252

Traffic citations 118
Exemption: 316.650(11) 251

Motor vehicle service agreement company guaranteeing organization filings
Exemption: 634.045(5) 286

Motor vehicle service agreement company salespersons investigative information
Exemption: 634.201(3) 286

Mug shots 102, 116, 154

Municipal utilities, bids prepared and submitted by 89
Exemption: 119.0713(3) 241

National Public Safety Broadband Network information
Exemption: 119.071(3)(d) 238

Natural gas transmission companies, proprietary confidential business information
Exemption: 368.108 254

Newborns left at fire station, emergency medical services station, or hospital; parent identity 73
Exemption: 383.51 259

911 and E911 communications systems, blueprints and location; records and meetings
Exemption: 119.071(3)(e)1. and 2.; 286.0113(4)(a) 209, 238

Nonprofit corporation investigations
Exemption: 617.0503(6) 281

Nonviable birth certificates.....75
Exemption: 382.008(8) 257

Notice requirements, Sunshine Law 44-46

Nurse Licensure Compact
Exemption: 464.0096 274

Nursing assistants, employee screening information
Exemption: 464.208(2) 274

Nursing home records
Exemption: 400.119 264

Nursing home residents.....95
Exemptions: 400.0077(1), (2); 400.022(1)(m); 400.0255(14) 263, 264

Offender Review, Commission on; application of open government laws..... 6, 72-73

Officers-elect, application of open government laws ..... see members elect

Oil and gas production, geophysical exploration operations reports
Exemptions: 377.22(2)(h); 377.2408(3); 377.2409; 377.2424(3) 255

Open Government Constitutional Amendment 1, 51, 57, 59, 60, 177, 178, 206

Open Government Sunset Review Act..... 51, 178, 225-226

Opportunity Fund
Exemption: 288.9626(2)(3) 250

Organizational sessions, application of Sunshine Law.....26

Osteopathic physicians, records and reports involving
Exemptions: 459.0083; 459.016(3); 459.017(3) 274

Overbroad public records request 167

Paramedics, disciplinary investigative information
Exemption: 401.414(3) 264

Paratransit services recipients or applicants
Exemption: 119.071(5)(h) 239

Parent locator service information
Exemption: 409.2577 267

Paternity determination proceedings
Exemption: 742.091 291

Patient's Compensation Fund claim files
Exemption: 766.105(3)(e) 293

Pawn broker transaction records supplied to law enforcement officials.....119
Exemption: 539.003 279

Payment instrument transaction database

Exemption: 560.312(1)(2) 280
Performing arts center, donor identities
Exemption: 265.7015 247
Personal records, application of public records law 133-135
Pesticide information
Exemptions: 487.031(5); 487.041(5) 276
Petroleum allocation and conservation, proprietary information
Exemption: 377.701(4) 255-256
Pharmacy records
Exemption: 465.017(3) 273-274
Physicians, records and reports involving
Exemptions: 458.3193; 458.337(3); 458.339(3) 274
Phosphate mine operators, annual reports
Exemption: 378.208(5) 256
Pilots (ships), probable cause investigation and treatment provider information
Exemptions: 310.102(3), (5) 250
Plant industry trade secrets
Exemption: 581.199 281
Policy Analysis and Government Accountability, Office of 88
Exemption: 11.51(4) 227
Political parties, Sunshine Law....20
Pollution control information
Exemptions: 403.067(7)(c)5; 403.111 265
Pollution response action contract bids
Exemption: 287.0595(3) 248
Polygraph records 119, 143
Port facilities; sale, use, or lease proposals
Exemption: 315.18 251
Pregnancy termination records and hearings....16
Exemptions: 390.01114(6)(f); 390.01116; 390.01118; 390.0112(4) 259
Prekindergarten Education Program, records of enrollees
Exemption: 1002.72 302
Prepaid College Program purchasers or beneficiaries
Exemption: 1009.98(6) 305
Prepaid limited health service organizations
Exemption: 636.064(1), (2) 287
Prepaid transit fare device purchasers, identifying information
Exemption: 341.0521 253
Prison records.... 64, 119-120, 178, 180
Exemption: 945.10 299

Prison work program corporation (PRIDE).....17, 22
Exemption: 946.517 299
Privacy, relationship to public records act 97-98, 140, 176-177
Private entities,
Application of Sunshine Law 18-20, 54
Application of Public Records Act 60-66, 120, 133, 190, 201, 218-219
Private cell phones, application of public records law.....85-86, 159-160, 165, 176-177
Private investigative, security, or recovery services
Exemptions: 493.6121(5), (7); 493.6122 277
Private entities leasing public health care facilities.....95
Exemption: 395.3036 263
Professional regulation
Complaints and investigatory proceedings 26, 100
Exemptions: 337.162; 455.225(2), (4), (10);
456.057(7)(a), (9); 456.073(2), (4), (9)(c), (10).....253, 272, 273
Disclosure of exempt records
Exemptions: 455.232(1); 456.082.....272, 273
Examinations..... 143-144
Exemptions: 455.217(5); 455.229(1)(2); 456.014(1)(2); 456.017(4).....272, 273
Impaired practitioner investigative material, generally
Exemptions: 456.076(13).....273
Information supplied to Department of Business and Professional Regulation.....92
Exemptions: 337.162; 455.229(1)(2) 253, 272
Information supplied to Department of Health 92
Exemption: 456.014(1)(2) 272
License applicant information and meetings
Exemptions: 455.229(1)(2); 456.014(1)(2).....272, 273
Professional Counselors Licensure compact
Exemption: 491.017 276
Regulated professions, management privatization corporation records
Exemption: 455.32(15).....272
Proprietary confidential business information generally..... 161-162
Proxy votes, use at public meetings.....50
Protective injunction petitions.....78
Exemptions: 119.0714(1)(k); 741.30(3)(b),
784.046(4)(b) 220-221, 291, 294
Public agency computer software..... 83-84
Exemptions: 119.071(1)(f); 119.0714(1)(b) 220, 236
Public guardians, personal information.....150

Exemptions: 744.2103 292
Public and Professional Guardians, Office of 77
Exemptions: 744.2104(2); 744.2105(6) 292
Public comment at board meetings.... 46-48
Public defenders, personal information.... 144-154
Exemption: 119.071(4)(d)2.l. 239
Public employee records
Applications, resumes and references....135
Collective bargaining, see that topic
Criminal history information.... 140-141
Exemptions: 39.821(1); 110.1127(2)(d)(e);
435.09; 1002.36(7)(d) 230, 232, 270, 301
Dependent eligibility determination 155
Exemption: 110.12301(3) 232
Drug testing information, *see* Drugs, subtitle employee drug testing information
Employee assistance program (mental health or substance abuse) identifying information 141-142
Exemptions: 110.1091(2); 125.585(2); 166.0444 ....232, 242, 243
Evaluations
Generally....142
Hospital employees 142
Exemption: 395.3025(9) 262
School employees 142-143
Exemption: 1012.31(3) 306
University and Florida College System institution employees 143
Exemptions: 1012.81; 1012.91 306
Examination questions and answer sheets, generally 143-144
Exemption: 119.071(1)(a)
Generally..... 135-156
Health insurance dependent information....155
Exemptions: 110.12301(3); 119.071(4)(b)....232, 238
Home addresses and other personal information.... 144-154, 180
Exemptions: 119.071(4)(d)2; 119.071(5)(i);
395.3025(10)(11) 239, 262
Inspection of personnel records....139
Medical information....154, 182
Exemptions: 110.123(10); 112.08(7); (8); 119.071(4)(b);
760.50(5); 1012.31(3) 232, 233, 293, 305
Misconduct complaints and related information

Department of Law Enforcement investigatory records
Exemption: 943.03(2) 27
Discrimination complaints, generally 98-99
Generally....136
Exemption: 119.071(2)(k) 237
Inspector general records, certified.... 99-100
Exemption: 112.31901 234
Law enforcement and correctional officers.... 144-154
Exemption: 112.532(4)(b); 112.533(2)(a)....239
School employees 139
Exemption: 1012.31(3) 305-306
University and Florida State College institution employees 143
Exemptions: 1012.81; 1012.91 306
Whistleblower complaints and investigations 100-101
Exemptions: 112.3188(1)(2) 234
Payroll deduction....155
Retiree lists 155
Exemption: 121.031(5) 241
Salaries....155
Search firms....34, 64, 142
Public Employees Relations Commission 189
Exemption: 447.205(10) 271
Public hospitals 97
Exemptions: 395.1056; 395.3035(2)-(5).... 261-262
Public school records and meetings
Examinations and tests 82
Exemptions: 1008.23; 1008.24(4)(b) 305
Interstate Teacher Mobility Compact Commission
Exemption: 1012.9931 306
Personnel files.... 135-156, 168, 171
Exemption: 1012.31(3).... 305-306
School employee complaint investigations 139
Exemptions: 1012.31(3); 1012.796(4) 305-306
School safety.... 37, 158-159, 201
Marjory Stoneman Douglas High School Public Safety Commission meetings
Exemption: 943.687(8) 299
Safe school officers, identification information 158
Exemptions: 1002.42(18); 1006.12(8) 302
Suspicious activity reporting tool, reporting party and other information... 158-159
Exemption: 943.082(6) 298

Student records and hearings
Dropout prevention and academic intervention program participants
Exemption: 1003.53(6) 302
Exceptional student placement 81
Exemption: 1003.57(1)(b) 302
Generally.... 81-82
Exemption: 1002.221 301
Medical records
Exemption: 381.0056(4)(a)16....257
Permanent cumulative records....81
Exemption: 1003.25(1) 302
Student expulsion hearings....22, 81
Exemption: 1006.07(1)(a)....304
Teacher certification examination materials....82
Exemption: 1012.56(9)(g)....306
Public utilities, confidential business information
Electric companies, joint power supply projects
Exemption: 163.01(15)(m) 242-243
Electric companies, due diligence review
Exemption: 119.0713(4)(b) 41
Generally..... 161-162
Exemptions: 350.121; 366.093 253-254
Telecommunications companies
Exemptions: 202.195; 364.183 ....244, 254
Water and water systems
Exemption: 367.156 254
Public works contract bidders, financial statement....89
Exemption: 119.071(1)(c)....235
Pugilistic exhibitions, promoter information
Exemption: 548.062(2)....279
Purpose of public records request 164
Putative Father Registry information 73
Exemption: 63.0541 231
Quick-response training
Exemption: 288.047(5)(e)(7) 249
Rabies vaccination certificates
Exemption: 828.30(5)....25
Racing animal drug test information
Exemption: 550.2415(1)(a)....279
Racing investigative information

Exemption: 550.0251(9) 279
Real property purchases, appraisals and offers 36
Counties
Exemption: 125.355(1) 242
Educational facilities
Exemption: 1013.14(1)(a) 307
Municipalities
Exemption: 166.045(1) 243
State agencies
Exemptions: 119.0711; 215.4401(1); 253.025(8)(f), (9)(d) 240, 245, 246
Recording of public meetings 35, 43, 48, 80
Recreation program participants, personal information 82
Exemption: 119.071(5)(c) 239
Redaction of exempt information 174-176, 214
Reemployment assistance records 91
Exemptions: 288.075(5); 443.1715(1) 249, 271
Registered public obligations, ownership or security interest records 91
Exemption: 279.11(1) 248
Regional planning council meetings, telephone or video conferencing 39
Requestor of public records, obnoxious behavior of 163-164
Residential care facilities, educational programs
Exemption: 402.22(3) 265
Respite care programs, identity of clients
Exemption: 430.504 270
Retail installment sellers, investigative information
Exemption: 520.9965 278
Retention of public records 86, 143, 203-205
Revenue collection and Department of Revenue personnel, personal information 144-154
Exemption: 119.071(4)(d)2.a. 239
Ridesharing arrangements, participants
Exemption: 119.071(5)(e) 239
Risk management programs 31, 131-132
Exemptions: 284.40(2); 768.28(16)(b)(c)(d) 248, 293-294
Road construction contractors, financial statements
Exemption: 119.071(1)(c) 235
Road construction cost estimates and bid information 89-90
Exemptions: 337.14(1); 337.168 253
Roll call vote at public meeting 50

Runaway youth programs and centers, client records
Exemption: 409.441(4) 267

Rural health network records
Exemption: 381.0055(1)-(3) 256-257

Safe houses and safe foster homes for sexually exploited children, location information
Exemption: 409.1678(6) 266

Saltwater products dealers, reports
Exemption: 379.362(6) 256

Scholarship-funding organization, contributing taxpayers
Exemption: 1002.395(6)(q) 301

School food and nutrition program records
Exemption: 595.409 281

School readiness program records
Exemption: 1002.97 302

Schools and day care facilities attended by children of certain government personnel 144-154
Exemptions: 119.071(4)(d),(5)(i) 239

Seaport security plans 157
Exemption: 311.13 250

Securities regulation
Exemptions: 517.12(14); 517.2015; 517.2016 278

Security background check information, generally 140-141
Exemption: 435.09 270

Security of data and information technology resources records and meetings, see cybersecurity

Security-system plans and meetings, generally 36-37, 156-159
Exemptions: 286.0113(1); 119.071(3)(a); 119.0725 ..... 208, 238, 241

Security system permits 157

Self-Insurers Guaranty Association claims files and meetings
Exemption: 440.3851 271

Senate, executive session journal 72
Exemption: 15.07 227

Serological test reports 94
Exemption: 951.27(2) 299

Service warranty association guaranteeing organization filings
Exemption: 634.4065(5) 287

Service warranty associations, examination or investigation records
Exemption: 634.444 287

Sexual battery victims, compensation payments
Exemption: 960.28(4) 300

Sexual harassment victims, see also discrimination investigations....99
Exemption: 119.071(2)(n) 237

Sexual offender information 87, 117, 177
Exemption: 944.606(3)(d) 299

Sexual offense victims.... 123-126
Exemptions: 119.071(2)(h)(j); 119.0714(1)(h);
92.56; 741.313(7); 784.046;
794.024; 794.03; 960.28(4) 219-221, 237, 291, 294, 300

Sexually transmissible disease control proceedings, name of subject....94
Exemptions: 381.004(2)-(5); 384.282(3) 256, 259

Sexually transmissible disease reports....94
Exemptions: 384.26(2); 384.29; 384.30(2) 259

Sexually violent predator records
Exemption: 394.921(2) 261

Social security numbers....159
Exemptions: 119.071(4)(a),(5)(a); 119.0714(1)(i)(2)(3);
193.114(5); 717.117(8) 220-222, 239, 243, 290

Social events, application of sunshine law....37

Space Florida....90
Exemptions: 288.075 29

Speaking at public meetings 46-48

Stadium plans, blueprints, and diagrams 156
Exemption: 119.071(3)(c)....238

Staff, exclusion from public meetings 48

Staff, application of Sunshine Law to

Staff committees 3-5

Staff members serving as liaisons.... 9-10

Staff members serving on boards....20

Stalking victims, personal information 78-79, 83, 122-123
Exemptions: 119.071(2)(j); 741.4651; 784.046(4)(b)....237, 291, 294

State attorney, executive order assigning to other circuit
Exemption: 27.151 228

State attorneys, personal information 144-154
Exemption: 119.071(4)(d)2.f. 239

State Fire Marshal investigatory records, meetings involving
Exemption: 633.126(5)....286

State surplus lands, valuation
Exemption: 253.0341(8)(a).... 246-247

State university records

Applications for presidency of state university, records and meetings....34, 135

Exemption: 1004.098(1)(2) 302
Budgets....90
Direct-support organizations 19-20, 77-78
Exemptions: 1004.28(5); 1004.30....303
Personnel records....143
Exemption: 1012.91 306
Prepaid College Program
Exemption: 1009.98(6)....305
Security of data and information technology 158
Exemption: 1004.055(1)....302
Sponsored research, proprietary information....196
Exemption: 1004.22(2)....303
Student records....81-82
Exemption: 1006.52(1)....304
Statewide prosecutors, personal information....144-154
Exemption: 119.071(4)(d)2.f. 239
Stationary sources of air pollution, trade secret information
Exemption: 252.943 246
Stock associations, stockholder lists
Exemption: 655.057(2)....289
Structured settlement transfer of payment, identifying information
Exemption: 119.0714(1)(l) 221
Subcontractors working for public agencies, application of public records act....65
Sunshine State One-Call of Florida, Inc., proprietary confidential business information
Exemption: 556.113 279
Support enforcement program information
Exemptions: 409.2577; 409.2579 267
Surveillance techniques, procedures, or personnel....94, 120-121, 196
Exemptions: 119.071(2)(d); 119.0714(1)(c) 220, 236
Surveillance videos 157-158
Survey responses....811
Surveyor application and examination information and investigatory proceedings
Exemptions: 472.0131(5); 472.0201(1), (2); 472.02011;
472.033(2), (4), (10)....275-276
Tax collectors, personal information....144-154
Exemption: 119.071(4)(d)2.n 239
Tax records
Communications services tax records
Exemption: 202.195 244
Convention development tax records

Exemption: 212.0305(3)(d) 244
Corporate income tax, declaration of estimated tax
Exemption: 220.242 246
Debt collection or auditing agency records
Exemption: 213.27(6) 247
Economic development agencies, information held by
Exemption: 288.075 249
Email addresses of taxpayers
Exemption: 197.3225 244
Federal tax information obtained pursuant to s. 26 U.S.C. s. 6103
Exemption: 192.105 243
Generally 93
Minerals severance tax returns
Exemption: 211.33(5) 244
Motor fuel tax records
Exemption: 206.27(2) 244
Oil and gas production tax returns
Exemption: 211.125(10) 244
Property tax information
Assessment roll studies
Exemption: 195.096(2)(e) 244
Exemption applications
Exemptions: 193.114(5); 196.101(4)(c) 243, 244
Information exchanged among governmental agencies
Exemption: 195.084(1) 243-244
Returns 93
Exemptions: 193.074; 288.075(7) 243, 249
Sale or purchase of property, information form
Exemption: 195.027(6) 243
Taxpayer records 93
Exemption: 195.027(3) 243
Registration information, sharing between local governments and state agencies
Exemption: 213.0535(5) 245
Returns and reports, generally 93
Exemption: 213.053(2)(a) 245
Tax compromise records
Exemption: 213.21(3)(a) 245
Taxpayer information obtained from Internal Revenue Service
Exemption: 213.28(6) 245
Tax deduction information in school system employee personnel records
Exemption: 1012.31(3) 305-306

Taxpayer technical assistance advisements
Exemption: 213.22(2) 245
Technology development programs
Exemption: 288.9520 249
Technology transfer centers, Florida College system institutions
Exemption: 1004.78(2) 304
Telecommunications access system applicant information
Exemption: 427.705(6) 269
Telecommunications service providers 159-160
Exemption: 119.071(5)(d) 239
Telephone and virtual meetings, application of Sunshine Law 37-40
Telephone records 85-86, 133-134, 159-160
Television signals and videotapes produced under public agency agreement
Exemption: 119.071(1)(e) 235
Temporary cash assistance recipients, identifying information 92
Exemptions: 414.106; 414.295(1)
Termination of parental rights proceedings....16
Exemptions: 39.809(4); 39.814(3),(4); 39.815(4),(5) 229, 230
Terrorism response plans of hospitals
Exemption: 395.1056 261
Text messages *see* electronic records and meetings
Threatened or endangered species, site-specific information
Exemption: 379.1026 256
Time for responding to public records requests....171-173, 199-201
Tobacco settlement agreement records
Exemption: 569.215(1) 280
Toll payment or prepayment, personal identifying information 92
Exemption: 338.155(6) 253
Tourism marketing and advertising research information
Exemption: 125.0104(9)(d) 242
Trade secrets, generally 159-161, 173
Exemptions: 119.0715, 815.045 ....241, 295
Traffic crash reports, personal information.... 117-118
Exemption: 316.066(2)(a)....251
Transportation, Department of
Exemptions: 334.049(4); 337.14(1); 337.162; 337.168;
339.0805(1)(c), 339.55(10(a) 253
Travel records, application of Public Records Act....156
Trauma agencies, patient care quality assurance information
Exemptions: 395.3025; 395.4025(12); 395.51; 401.30....262, 263, 264

Tuberculosis control information
Exemptions: 392.54(2); 392.545(3); 392.65 260

Twitter 85

U.S. Attorneys, judges, and magistrates, personal information.... 144-154
Exemption: 119.071(5)(i) 239

U.S. Census Bureau address information
Exemption: 119.071(1)(g)....236

Unclaimed property 92
Exemptions: 717.117(8); 717.1301(5) 290

Undercover personnel of criminal justice agencies, information revealing....105, 121
Exemptions: 119.071(4)(c); 119.0714(1)(g)....220, 238

Utilities, information related to security of information technology and industrial control technology
Exemption: 119.0713(5)(a)....241

Utility payment records....93

Vendor negotiations with agencies.... 35-36
Exemption: 286.0113(2).... 208-209

Venue in public records cases....76, 198

Vessel registration or decal records
Exemption: 328.40(3)....252

Veterinarians, records and reports, involving
Exemption: 474.2185 276

Violent Crime and Drug Control Council meetings, criminal intelligence
Exemption: 943.031(9)(c)(d) 297

Virtual meetings.... 37-40

Volunteer fire departments, application of open government laws 20, 60, 63

Vocational rehabilitation program records
Exemptions: 413.012(1); 413.341....268

Vote-by-mail ballots, record of requests and delivery information....82
Exemption: 101.62(3)....232

Voter or voter registration information.... 82-83
Exemptions: 97.0585; 98.045(3); 98.075(2)(c);741.465....232, 291

Voting systems software
Exemption: 101.5607(1)(d) 232

Vulnerable adult abuse records and reports....76
Exemptions: 415.107(1), (3)(l), (6); 415.1103(10) 269

Wards of public guardian....77
Exemption: 744.2103(2); 744.2111(1) 292

Water management district employee medical records....154
Exemption: 112.08(8)....233

Water management district lands, appraisal information and offers
Exemption: 373.139(3)(a)..... 254-255

Water management districts, surplus land valuations
Exemption: 373.089(1)(b)(c) 254

Water treatment facility plans, blueprints, and diagrams.....156
Exemption: 119.071(3)(b) 238

Whistle-blower information 100-101
Exemptions: 20.055(6)(b); 112.3188(1), (2) 227, 234

Wireless emergency 911 telephone service providers
Exemption: 365.174 254

Workers' compensation records and reports
Exemptions: 440.108; 440.125; 440.132; 440.1851(1); 440.25(3); 440.39(7);
440.515; 624.23.....270, 271, 281

Workshop meetings 25-26, 38-40, 41, 44-47

Written public records request, authority to require..... 167-168