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**Records & Information Management**

**Public Records  
Frequently Asked Questions  
(FAQ's)**

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# Public Records FAQ's

## **Q: What is a Public Record?**

A: 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.

## **Q: May an agency impose its own restrictions on access to or copying of public records?**

A: No. 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.*

## **Q: What individuals are authorized to inspect and receive copies of public records?**

A: Section 119.01, F.S., provides that “it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by *any person*. 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.”<sup>1</sup>

## **Q: Must an individual show a “legitimate interest” or “noncommercial interest” in public records before being allowed to inspect or copy the same?**

A: No. The requestor 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 the under the Public Records Act.”<sup>2</sup>

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 use.

## **Q: What agency employees are responsible for responding to public record requests?**

A: 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, however must disclose the identity of the designee to the person requesting to inspect or copy public records. Section 119.07(1)(b), F.S.

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<sup>1</sup> *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6<sup>th</sup> Cir. Ct. February 27, 1997)

<sup>2</sup> *Curry v. State*, 811 So. 2d 736, 742 (Fla. 4<sup>th</sup> DCA 2002)

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.<sup>3</sup> However, “the mere fact that an employee of a public agency temporarily possesses the document does not necessarily mean that the person has custody as defined by section 119.07.” In order to have custody, one must have supervision and control over the document and have legal responsibility for its care, keeping or guardianship.<sup>4</sup>

The custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. Section 119.07(1)(c), F.S. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.<sup>4</sup>

**Q: Is an agency required to provide copies of public records if asked, or may the agency allow inspection only?**

A: Yes, an agency is required to provide copies of public records if/when requested, upon payment of the fee prescribed by law, if applicable. The agency may allow inspection only if the requestor desires to do so. However, if he/she wishes to receive copies of the public records then it’s the duty of the responding agency to provide him/her copies of those public records.

**Q: May an agency refuse to comply with a request to inspect or copy public records on the grounds that the records are not in the physical possession of the custodian?**

A: No. 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.<sup>5</sup>

**Q: May an agency refuse to allow access to public records on the grounds that the records are also maintained by another agency?**

A: No. The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption.<sup>6</sup>

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.<sup>7</sup>

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<sup>3</sup> *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4<sup>th</sup> DCA 1998) (citing *Williams v. City of Minneola*, 575 So. 2d 683, 687 [Fla. 5<sup>th</sup> DCA 1991])

<sup>4</sup> *Id.* Cf. *Remia v. City of St. Petersburg Police Pension Board of Trustees*, 14 F.L. W. Supp 854a (Fla. 6<sup>th</sup> Cir. Ct. July 17, 2007), cert. denied, 996 So. 2d 860 (Fla. 2d DCA 2008)

<sup>5</sup> See *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997)

<sup>6</sup> AGO 86-89

<sup>7</sup> *Warden v. Bennett*, 340 So. 2d 977, 979 (Fla. 2d DCA 1976)

**Q: May an agency refuse to allow inspection or copying of public records on the grounds that the request is “overbroad” or lacks specificity?**

A: No. In *Lorie v. Smith*<sup>8</sup> 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.

**Q: May an agency require that a request to examine or copy public records be made in writing?**

A: No. Chapter 119 does not authorize an agency to require that requests for records be in writing.<sup>9</sup> 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 prescribed fees are paid.<sup>10</sup>

**Q: May an agency require that the requestor disclose his or her name or furnish background information to the custodian?**

A: 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.<sup>11</sup>

**Q: Is an agency required to answer questions about its public records or create a new record in response to a request for information?**

A: No. 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 public records’ provided that the required fees are paid. Section 119.07(1)(a) and (4), F.S. However, a custodian is not required to give out information from the records of his or her office.<sup>12</sup>

In other words, Ch. 119, F.S., provides the 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.

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<sup>8</sup> *Lorie v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), review denied, 475 So. 2d 695 (Fla. 1985)

<sup>9</sup> See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302n.1 (Fla. 3d DCA 2001)

<sup>10</sup> AGO 80-57

<sup>11</sup> AGO 92-38 & AGO 91-76

<sup>12</sup> AGO 80-57

**Q: Is an agency required to provide public records in the medium or format requested, or may the agency select the medium or format for production?**

A: An agency must provide a copy of the records 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 Section 119.01(2)(f), F.S.<sup>13</sup>

In reference to formatting, an agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor.<sup>14</sup>

**Q: Is an agency required to provide remote access to public records?**

A: An agency is authorized but not required to permit remote electronic access to public records. Section 119.07(2)(a), F.S., states that “as 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.”

This additional means of access, however, is insufficient where the person requesting the records specifies the traditional method of access via paper copies.<sup>15</sup>

**Q: When must an agency respond to a public records request?**

**Duty to acknowledge requests promptly:**

A: 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.

**Automatic delay impermissible:**

An agency may not adopt a policy which provides for an automatic delay in the production of public records.<sup>16</sup>

**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 impermissible under very limited circumstances.”<sup>17</sup>

In *Promenade*, the court noted that a records custodian could delay production to determine whether the records exist, if the custodian believes that some or all of the record is exempt, or if the requesting party fails to forward the appropriate fees. Otherwise, the only delay in producing

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<sup>13</sup> AGO 13-07

<sup>14</sup> *Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4<sup>th</sup> DCA 1982), review denied, 431 So. 2d 988 (Fla. 1983) & AGO 08-29

<sup>15</sup> *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332, 333 (Fla. 1<sup>st</sup> DCA 2015)

<sup>16</sup> *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)

<sup>17</sup> *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1<sup>st</sup> DCA August 28, 2014)

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.”<sup>18</sup>

**Arbitrary time for inspection:**

While the records 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.<sup>15</sup>

**Standing Requests:**

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 in may receive in the future.

**Q: May an agency enter into confidentiality agreement or refuse to allow public records to be inspected or copied if requested to do so by the maker or sender of the record?**

A: An agency “cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements.”<sup>19</sup>

To allow the maker or sender of the 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 of the terms of Ch. 119, F.S.<sup>20</sup> 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 the regard cannot supersede the requirements of Ch, 119, F.S. Accordingly, it is clear that the determination as to when public records are to be deemed confidential rests exclusively with the Legislature.

**Q: Must an agency state the basis for its refusal to release an exempt record?**

A: Yes. Section 119.07(1)(e), F.S., states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f), F.S.

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<sup>18</sup> *Id.* at 983, citing *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)

<sup>19</sup> *The Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10<sup>th</sup> Cir. Ct. August 19, 1991)

<sup>20</sup> *Browning v. Walton*, 351 So. 2d 380 (Fla. 4<sup>th</sup> DCA 1977)



**Q: What options are available to an agency if a record contains both exempt and nonexempt information?**

A: 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.<sup>21 22 23</sup>

**Q: May an agency refuse to allow inspection of public records because the agency believes disclosure could violate privacy rights?**

A: 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 the hands of a governmental agency.”<sup>24</sup>

Accordingly, the Florida Constitution “does not provide a right of privacy in public records” and a state or federal right of disclosure privacy does not exist.<sup>25</sup>

**Q: What is the liability of a custodian for release of public records?**

A: 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.<sup>26</sup> 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 communication is necessary to the agency’s transaction of its official business.<sup>24</sup>

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<sup>21</sup> *Ocala Star Banner Corp. v. McGhee*, 643 So. 2d 1196 (Fla. 5<sup>th</sup> DCA 1994)

<sup>22</sup> *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4<sup>th</sup> DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995)

<sup>23</sup> AGO 95-42

<sup>24</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 Fla. 5<sup>th</sup> DCA 1991), review denied, 589 So. 2d 289 (Fla. 1991)

<sup>25</sup> *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985)

<sup>26</sup> *City of Tarpon Springs v. Garrigan*, 510 So. 2d 1198 (Fla. 2d DCA 1987)