

Public Records Computer-based Training Part 1

Welcome

Welcome to the Department's Public Records Computer Based Training, part 1.

The objectives of this training are to help you:

- Understand the importance of Florida's Public Records Law
- Understand key principles and provisions of the law
- Be able to define key terms
- Understand the public records process and your role in the process
- Be able to properly respond to persons who ask to review or copy public records
- Be able to correctly answer key questions regarding public records

Let's begin with some basic information to help understand why the subject of public records is so important. Florida has a long history of providing the public with access to public documents. Florida's Public Records Law can be found in Chapter 119, Florida Statutes.

The right of public access to public records also can be found in Florida's Constitution. The Department also has adopted an Open Government Bill of Rights addressing the public's right to access public records. It begins by stating the obvious:

"Members of the public are entitled to be treated with respect, courtesy, and professionalism when interacting with the Department."

You will find a link to this document on the resources page.

It is important for every employee to know about public records and the public records law because:

- There are serious penalties associated with the failure to comply with Florida's Public Records Law.
- Access to public records and open government are priorities of the Department and the Governor.
- Every state agency is required to have a public records contact person.

In the Department, the public records contact person is the General Counsel, and the backup is the Department's Communications Director. Each district has at least one attorney designated as the

point person for public records issues and questions. All employees should contact the legal office when they have questions about public records.

Florida makes the duty of providing access to public records both a public agency duty and a public employee duty. Section 119.01(1), Florida Statutes, provides:

“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.”

Section 119.07(1)(a), Florida Statutes, provides:

“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.”

Chapter 119, Florida Statutes, also contains exemptions from the public records law. Exemptions prohibit or limit the release of certain records, or information in records, that may otherwise be public. Additional exemptions can be found in other chapters in Florida statutes. More information and guidance about exemptions will be provided later in this training.

You should not think that just because you aren't in a management position or you haven't been assigned any specific responsibilities regarding public records, that you don't need to know about public records or the public records law. Public records and what is required to comply with the public records law are everybody's business and everybody's responsibility. All employees need to know enough about public records to help them comply with the law and know how to handle public records requests when they are received.

The public records law contains some very specific requirements. However, some people mistakenly believe the law contains requirements or deadlines that are in fact not in the law. The law **does not** require either you or the Department to:

- create new records if those records don't already exist
- produce records in a format other than as kept by the Department
- answer questions about records provided
- provide information or explanations about the records provided

It is very important to know what the law – and the Department – require and what is **not** required. All employees also need to know what to say – and what **not** to say - as well as how to say it - to people who want copies of public records or want to review public records.

There can be legal consequences for both employees and the Department for failing to comply with the law and more serious penalties when the law is intentionally violated. Not knowing what the law requires is not a valid excuse. What you don't know can hurt you and the Department.

Upon completion of this training you should have a better understanding of the law and the Department's processes and expectations and know where to go when assistance is needed.

Public records come in a wide variety of shapes, sizes, and formats, including electronic records and email. In Florida, virtually EVERYTHING that is made or received pursuant to law or ordinance - or made or received in connection with official Department business - is a **public record**. The key element in determining whether a document, whether it is a letter, data, email, etc., is a public record, is to ask yourself: "was the document made or received pursuant to law?" and "was the document made or received in connection with the transaction of official agency business?"

If the answer is yes to one or both of these questions, the document is a public record.

If the document was **not** made or received pursuant to law OR it was **not** made or received in connection with the official business of the Department – it is **not** a public record. If it is not a public record, the law does not require that it be produced, and the law does not require that the document be made available for inspection by the public.

You should not assume that this means that personal documents or emails stored on or sent through a Department computer will not be produced to people who request access to public records. Although an employee's personal email messages or personal documents on a Department computer or electronic device may not be public records because they were not made or received in connection with official Department business, the Department may still provide access to or copies of those records in response to a public records request.

If you want to keep something personal, you should not use Department computers or electronic devices to create, store, or transmit the information.

Electronic data and information are public records, and must be provided in response to a public records request unless exemptions apply to the information or the entire record. Section 119.01(1)(f), Florida Statutes, provides that each agency that maintains a public record in an electronic recordkeeping system shall provide to any person a copy of any public record in that system which is not exempt.

Electronic records such as email and text messages are public records.

When employees use their personal accounts or electronic devices, such as cell phones, home computers and other electronic communication devices to conduct or communicate Department business, the Department does not have the same ability to identify and retrieve records. Information sent and received in connection with the transaction of Department business on a personal electronic device **is a public record**. However, unlike work performed and communicated through your Department email account, the information created, sent, or received on a personal email account or electronic device is not captured on a Department server unless a copy is sent to an active Department email account.

Most employees should never use personal email or electronic equipment to conduct Department business. Certain employees may be authorized to use personal electronic devices for Department

business, after first obtaining their supervisor's approval. Any employee who wishes to use a personal electronic device to access Department email or other Department systems must first receive permission from their manager.

Every employee who makes the personal decision to use his or her personal email account or personal electronic device in connection with Department business is accepting all of the duties and responsibilities of a records custodian and must take some very definitive steps to ensure compliance with the public records law. Any employee who does not want to accept those duties and responsibilities should never use his or her personal accounts or electronic devices for Department business.

If you send or receive an email regarding Department business using a personal email account, a copy of each email should be sent to your Department email account. Those emails will then be archived on a Department server, records retention requirements will be met, and your emails will be retrievable when requested as public records.

If you don't send a copy of an email to your Department account, you will be personally responsible for retaining the email as required by law and identifying and providing access to the email to anyone who requests a copy under the public records law.

You have completed part 1. Thank you for your time and attention.