

Public Records Computer-based Training - Part 2

Welcome

Welcome to the Department's Public Records Computer Based Training, part 2.

Text messages sent or received in connection with Department business, like email, are public records. However, they are very different from email and must be handled differently.

Under the public records law it is the message (what is communicated) and not the medium (how it is communicated) that is important in determining the period for which a record must be retained and provided to a requestor. This means that there is no single public records retention period that applies to all electronic communications because the retention period is determined not by the fact that it is an electronic communication, but by the content, nature, and the purpose of the communication.

Retention periods for all categories of public records, including electronic communications messages, are addressed in the General Records Schedule for GS1-SL for State and Local Government Agencies developed by the Department of State. Any employee who receives a request for emails or text messages should immediately contact the legal office for guidance in making sure public records requirements are met.

So now we know what a public record looks like. What does a public records request look like?

It may surprise you to know that a public records request doesn't have to "look" like anything; that's because a public records request does not have to be in writing. The law doesn't require it and you **must not** ask that a public records request be put in writing.

For example. Let's say a person walks into a Department building and politely says to the receptionist: "I would like to see all documents regarding equipment purchases made by the Department last year."

Do you think this a public records request?

If you think the statement is a public records request; you are correct.

Statements such as this as are public records requests, even though the person doesn't use the word "public" or "records" or "request".

It is important to remember that if you talk to someone who is requesting public records, you **must not ask** that the request be put in writing. You also **must not ask** why the records are being requested - except under very limited circumstances which will be explained shortly.

If you receive a phone call from someone asking how they can get or look at public records, you can say "If you want to, you can send a request to me in writing or I can write down in detail what you are requesting." Many requestors will want to send something in writing, particularly by email, and you should make it easy for them to do so.

You can (and should) provide your email address, and you can provide the email addresses for the Department's public records contacts. Always be polite and try to be helpful.

If you write down what records are being requested, be sure to read it back to the person to be sure you have written it down correctly. **DO NOT** tell requestors that they must send a letter, an email, or anything in writing describing what they want or why they want it. **Don't ask for personal information** from anyone wanting copies of public records – although there are two important exceptions to this statement which we will discuss in a moment.

You can say: "Would you like to check back with me about your request or would you prefer to leave contact information for us to contact you?"

While requestors are not required to give any personal information about themselves, it is important that requestors know who they can contact to check on the status of their request. Therefore, if you receive the call and the requestor asks for your name and contact information, provide it to him or her, even if you are certain you will not be handling the request to its conclusion.

If you know the name and contact information of the person who will be handling the request, you can provide that information to the requestor. It is important that each requestor knows the name and telephone number of someone in the Department to call and check on the status of the request.

If someone else will be handling the request after the initial contact, be sure to find out who that is so you can give that information to the requestor when he or she calls back. Although we just said that employees should not ask for the person's name or ask why the person wants the records requested, there are two very important exceptions to this prohibition.

The first exception is when someone asks for plans or structural inspection reports regarding Department buildings or bridges. The second exception is when someone asks for records regarding or disclosing a Department security system (for example, copies of facility video surveillance tapes).

In both of these instances, the person making the request must provide his or her name and the reason or purpose for the request and must complete the required Department form, or the records cannot be provided. There will be further discussion and instruction on how to handle requests for these types of records later in this training.

However, if you do not routinely work with these kinds of records and are not familiar with the requirements for release, call the legal office for assistance if you receive a request.

Remember – except for the two circumstances just mentioned - requestors of public records do not have to give their name, their telephone number, the business they are associated with, or anything else about themselves or why they want the records. **And - you must not ask.**

Whether your main job duties are to answer the phone and transfer calls to others, or you manage an entire unit or office, you need to know what the law requires and what to say to people who request public records. Chapter 119, Florida Statutes, provides that "Every person who has custody of a public record shall permit the records to be inspected and copied by any person desiring to do so . . ."

Almost every employee has “custody” of some records. A receptionist or security guard might well be the custodian of an official visitor log, a type of record that is frequently requested in person. Even if you think you don’t have “custody” of public records, you should not refuse to talk to someone who is requesting public records, you should not refuse to allow inspection of records, and you should not refuse to write down information given to you by a person requesting public records.

For example, you should never tell someone “that’s not my job”, “I don’t handle public records requests”, or “No, you can’t look at that record.”

If a request catches you by surprise or you are not sure exactly how to respond, call for help. The legal office is always available to assist with requests.

However, **never say** “I have to check with legal” or “I have to send your request to legal.” Some requests may require legal review, but that fact is not important when the request is first received. And, such a statement erroneously may be perceived by the requestor as a delay tactic.

You may want to use an alternate response, like, “allow me contact someone regarding the request.”

You can and should contact legal with any questions or concerns you may have including having the legal office review the documents you believe are responses to the request; prior to providing them to the requestor.

Requests are most frequently made by email or over the phone. However, requests can be, and from time to time are, made in person. In-person requests can sometimes take employees by surprise, especially if the employee is not used to receiving public record requests.

If someone makes an in-person request to you to see a particular record and you are not sure what to do, say “ok, I’ll get someone who can help you with that” and get help. You can always call the legal office for assistance with these situations.

Thank the requestor for their patience and let them know someone will be right with them.

If you sit at a front desk and the requestor wants you to stop what you are doing to make copies or thinks you should be handling the request alone, it is okay to say “I’m sorry, I can’t leave my desk to look for records or make copies, please let me get someone to help you.”

Remember:

- do NOT ask for the person’s name
- do NOT make them fill out any paperwork or write anything down
- do NOT ask them why they want the records
- do NOT tell them they cannot see the records without first discussing the request with the legal office

Receptionists and front desk security guards should be extra vigilant and particularly aware that someone may ask in person to see or to copy visitor sign in sheets or visitor logs. Generally speaking, the visitor logs should not contain any exempt or confidential information and should immediately be made available for inspection.

Always remember, if you are not sure how to handle a request or whether a record can be inspected, be polite, get help, and do not tell a requestor they can't inspect a record. Every public records request must be acknowledged and responded to. Chapter 119, Florida Statutes, requires that public records requests be acknowledged "promptly" and responded to "in good faith" and within a "reasonable time".

If contact information has been provided by the requestor, an acknowledgement should promptly be sent confirming receipt of the request. Section 23.30, Florida Statutes, establishes the Florida Customer Service Standards Act, and sets certain standards for handling customer inquiries and providing good customer service. With these standards in mind, the Department expects that employees normally should acknowledge receiving a public records request no later than 48 hours after receipt or by the end of the next business day after receipt.

A complete response may require more time. The response will provide copies of the records requested, advise the requestor that the records are available for review, or advise the requestor that, after a thorough search, no such records could be located. A response is to be provided within a "reasonable" time.

Depending on the breadth of the request and the amount of work that will be required to identify and gather the responsive records, it may be necessary to advise the requestor that due to the extensive nature of the request, there will be costs involved and you will need to develop an estimate of those costs. More information on allowable charges and providing estimates will be provided later in this training.

There may, of course, be other communication with the requestor between the initial acknowledgement and the final response, especially when the request is voluminous or unclear, or more information is needed to fulfill the request. The law does not say exactly how much time is a reasonable amount in which to respond to a public records request. What is reasonable for a particular request depends on the amount of time it takes to locate, retrieve, redact, copy, and produce the requested records.

How much time is reasonable can vary depending upon the number of records requested, where the records are kept or could be kept, and the complexity of the request. For example, if a request is complex and the potentially responsive records could be numerous and kept by various offices, three weeks might be considered a reasonable time in which to provide them. On the other hand, if the request is extremely simple, a delay of even one day might be unreasonable.

The law does not require employees to ignore all other job duties and responsibilities until the request is responded to. Rather, it is expected that all employees will be diligent in their efforts to respond to the request and comply with the law.

It is important to know that there should not be any arbitrary or artificial delay in providing a response to a public records request. An unjustified delay in complying with a public records request is considered to be an unlawful refusal to comply with the law and could result in legal consequences for the Department and the employee.

Florida's public records law provides penalties for violations of its provisions. Those penalties include a fine of up to \$500 for violating Chapter 119; a fine, removal from office, and up to 60 days in jail for knowingly violating Chapter 119 provisions regarding exemptions; and a fine and up to 60 days in jail for willfully and knowingly violating any provision of Chapter 119.

In addition, the Department may be required to pay attorney's fees and costs incurred if a lawsuit is filed to enforce compliance with the public records law and may be subject to penalties if the court determines that the Department unlawfully delayed or refused to permit a public record to be copied or reviewed.

You have completed part 2. Thank you for your time and attention.