

Public Records Computer-based Training - Part 3

Welcome

Welcome to the Department's Public Records Computer Based Training, part 3.

It has been estimated that there are over 1,000 exemptions to Florida's Public Records Law. It is important to remember that in order for public records or information contained in public records to be withheld, there must be a statute specifically making the record or the information exempt or confidential. Most exemptions are found in Chapter 119, Florida Statutes, but many others appear throughout other chapters and sections of Florida law.

It is also important to know that if records, or information in records, cannot be provided because it is exempt or confidential, the Department must not only tell the requestor what is not being provided, but must also tell the requestor what statute specifically makes the record or the information exempt or confidential. If documents or information is exempt or confidential, your local legal office will assist with this part of the process.

It is also important to know that there is a difference between an exempt record or information and a confidential record or information. When a record or information is EXEMPT, it means that a specific provision in law allows agencies to withhold that record or information from public inspection and copying. However, agencies may release exempt records or information under certain circumstances.

On the other hand, if a public record or information in a public record is confidential, it is not intended to be disclosed to other persons and cannot be released without specific statutory authority. Agencies have no discretion to release confidential records or information. When a record or specific information is confidential, it is usually identified as confidential and exempt in Florida statutes.

All employees should have at least a basic understanding of some of the general categories of exemptions to Florida's Public Records Law. Some exemptions make an entire record exempt or confidential. For example, medical records in an employee's file.

Other exemptions only apply to specific information contained in an otherwise public record. When information is exempt or confidential, the record can be produced but the exempt or confidential information must be deleted or "redacted". Redacted is defined in the public records law to mean "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."

This means that before giving a copy of a public record containing exempt or confidential information, you should make a copy of the document, delete the exempt or confidential portions by using whiteout or a dark marker, and recopy the document to give to the requestor. Do not mark on or change the original document.

Some public records exemptions are based on security concerns. Records in this category include bridge inspection reports, structures information and plans, and security system plans.

Other exemptions are based on a recognized need to protect trade secrets and financial statements of private businesses that may be in Department files. Employees should contact their legal office if documents that have been requested were received from a private company marked or labeled with the words “confidential,” “proprietary,” or “trade secret”.

The law also provides that sealed bids are exempt for a limited period of time.

Still other exemptions are based on individual privacy and security concerns. In this category, social security numbers are exempt and confidential; bank account and credit card information is exempt; and personal and family information such as home addresses and phone numbers, names of spouses, children, and children’s schools, of current and former law enforcement officers and other professionals such as judges, prosecutors, public defenders, certain health care workers, correctional officers, and many others are exempt.

“Personal identifying information” acquired by the Department to establish prepaid and other accounts to use electronic toll facilities is exempt under Section 338.155(6), Florida Statutes.

There are two especially important exemptions from the public records law that need to be explained in more detail. These exemptions were briefly mentioned earlier in this training. One of these exemptions is for records that show the structural elements of buildings and “structures.”

The word building is self-explanatory. The word “structure,” on the other hand, has been defined by the Department, for the limited purpose of this exemption, to include only bridges as further explained in Procedure 050-020-026. These records are **exempt** from public records requests.

Although these records are exempt, the Department can release them to the persons and entities identified in Section 119.071(3)(b), Florida Statutes. Persons who are able to obtain these records include professionals performing work on the building or bridge and other governmental entities who need the records to perform their duties and responsibilities. The Department can also release the records to a person or entity that needs them to perform work for the Department.

To ensure that the criteria for releasing these exempt documents are strictly adhered to, the Department developed Procedure 050-020-026 and three associated forms to document requests for these records. This is one of the few times when it is not only appropriate but required that you ask a person his or her name and the purpose for which the records are being requested. The name of the person and the entity making the request, as well as the reason for requesting the records, are required to comply with the law and **must be obtained as required by the procedure**. Before the records can be released a determination must be made that, based upon the information provided, the requestor meets all of the required criteria.

Employees should explain to anyone requesting these types of records that Section 119.071(3)(b), Florida Statutes, requires that the information requested by the Department be provided before the records can be released. All persons handling such requests must ensure that one of the three Department forms identified in the procedure is completed before any records or information is provided.

All questions regarding plans, blueprints, schematic drawings, and other records depicting Department buildings and bridges should be directed to the Contracts Office or the Office of the General Counsel.

Section 119.071(3)(a), Florida Statutes also provides another exemption, making security system plans, or any portion of a security plan, both confidential **and** exempt. Under this exemption, these records can be provided only to the property owner or leaseholder of property owned by or leased to an agency **or** to another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage any attempted or actual act of terrorism, or to prosecute those responsible for such attempts or acts. Because the information is **both confidential and exempt**, the Department has no discretion to release these records and therefore cannot release them to anyone other than those persons and entities identified in the statute.

In this situation, as in the one just described regarding buildings and structures, Department employees must follow Procedure 050-020-026 and require completion of the appropriate form by the requestor. As with requests for structure plans, it is necessary to obtain the name of the person and the entity making a request for a security system plan, and the requestor must provide a valid reason for the request or the intended use of the records.

Remember, the Department does not have the discretion to release security plan records as it does with structure and other plan records because they are not only exempt, they are also confidential. Therefore, unless the requestor meets all of the criteria to receive a copy of the documents requested, the documents **will not be provided**.

Questions regarding requests for security systems plans should be directed to the Office of the General Counsel.

While the public has a right to review or obtain copies of public records, all persons requesting records must pay the costs associated with fulfilling their request that are allowed by law. Section 119.07(4), Florida Statutes, authorizes public agencies to charge for certain costs associated with copying public records and, when applicable, a special service charge.

Costs can include:

- up to 15¢ for each one-sided 8 ½ x 11 copy; and an additional 5¢ for each two-sided copy
- up to \$1 for a certified copy
- a special service charge for extensive use of technology resources and personnel time

The Department provides additional guidance for calculating costs, obtaining a deposit, and requesting additional information to clarify a public records request in its Guidelines for Responding to Public Records Requests. Additional costs that can be charged are identified in that document, which include:

- The cost of packaging and shipping

- The time spent by Department personnel in identifying, gathering, and reviewing records for exempt and confidential information.

Note: The first 30 minutes of time spent by Department personnel in responding to a request are free.

If it is expected that costs or service charges will be incurred, it is important to accurately estimate them and advise the requestor in sufficient detail to let him or her know what is being charged.

Once an estimate of the time required to respond to a request shows that more than 30 minutes will be required to identify, gather, and review the requested records for exempt or confidential information, no further work to gather or copy the records should begin until a deposit in the amount of the estimate is received. All payments for public records should be made payable to the Department of Transportation. When payment is received it should be sent to the office of the comptroller for deposit.

If the amount has been under-estimated, contact the requestor and obtain an additional deposit before continuing to complete the request. Of course, if there has been an over-estimate, the requestor is entitled to a refund. As a matter of practice, it is better to underestimate the time required than over-estimate it. All estimates must be made in good faith and should be based on the hourly rate of the lowest compensated employee who is qualified and capable of performing the required work.

If an estimate is going to be very large, do not communicate the estimate without first checking with your management and the legal office. When in doubt, or if you have questions regarding costs, contact your legal office. On occasion, a requestor will object to or complain about being charged for records. However, all of the charges mentioned and identified in this training and in the Guidance document found through the link on the resources page are authorized by law and Florida courts have upheld agency charges that are consistent with the law.

Continuing questions and complaints from requestors can be referred to the legal office.

Florida's Public Records Law requires that public records be kept for the period of time as determined by the Division of Library Information Services of the Department of State. Links to the most current records retention schedule can be found on the resources page.

As previously mentioned, you must remember that it is the message (what is communicated) and not the medium (what instrument is used) that triggers the public records law and determines the appropriate retention period.

There are a number of reasons why the Department may require that certain records or categories of records be kept for a period of time longer than required by the Department of State. In those instances, the Department's time frames must be followed. The Department recognizes that there may be challenges when it comes to the proper handling of public records requests. However, through training and experience, those challenges can be opportunities to teach and to learn.

The next topic will emphasize and elaborate on some of the challenges employees can face in handling public records requests.

You have completed part 3. Thank you for your time and attention.