

***Highland Meadows
Community Development District***

Workshop Agenda

June 8, 2026



Ethics Training for CDD Supervisors - 2026



Why Mandatory Annual Ethics Training?

- ▶ Annual ethics training is a state-mandated requirement for all of Florida's elected and appointed local officers of independent special districts.
 - ▶ Not just CDD supervisors - also includes the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools
- ▶ Chapter 112, Florida Statutes = The Code of Ethics for Public Officers and Employees
 - ▶ All elected local officers of independent special districts, and persons appointed to fill those seats if vacant, are required to complete four (4) specific hours of ethics training annually.
 - ▶ If an official is elected on or before March 31, the official must complete their annual ethics training by December 31 of the year their term begins. If their term starts after March 31, the official is not required to complete the required ethics training until December 31 of the following year.

Requirements for Annual Ethics Training

- ▶ The four (4) hours must include:
 - ▶ two hours of Chapter 112, F.S. known as Florida's Ethics Law
 - ▶ one hour of Chapter 119, F.S. known as the Public Records Law
 - ▶ one hour of Chapter 286, F.S. known as the “Sunshine Law”
- ▶ Completion of ethics training is certified on Form 1 filed by elected and appointed special district officials each year (due July 1st).
 - ▶ Certification of completion is on the ‘honor system,’ however the Commission on Ethics checks completion and investigates any challenges related to this requirement.



Reporting Completed Ethics Trainings

- ▶ Timing of Reporting:
 - ▶ 2024 was the first full year in which ethics training was required for CDD supervisors.
 - ▶ Form 1 information is reported retroactively for the previous calendar year.
 - ▶ Think about how you file your taxes - you file a tax return in April 2026 for income generated in calendar year 2025. Form 1 operates the same way.
 - ▶ You will certify that you completed your required ethics training for calendar year 2025 on your Form 1 due by July 1, 2026.
- ▶ The District Manager's office will be in contact to remind you to complete your Form 1 filings.
- ▶ Form 1 Instructions and E-Filing Sample:
<https://disclosure.floridaethics.gov/2024/form/1/instructions/print>

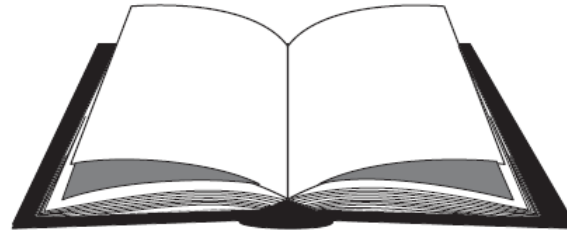
The Constitution of the State of Florida - History and Foundation of Ethics Laws

- ▶ The Constitution of the State of Florida was revised to require a code of ethics, prescribed by law, for all state employees and nonjudicial officers, with the intention of prohibiting conflicts between public duty and private interests.
- ▶ In 1976, the Sunshine Amendment was adopted.
 - ▶ Article II, Section 8, of the Constitution of the State of Florida: “A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.”
- ▶ The Sunshine Amendment provides additional constitutional guarantees concerning ethics in government and requires an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges.

We will cover:

1. Government in the Sunshine Law
2. Public Meetings
3. Public Records

GOVERNMENT-IN- THE-SUNSHINE MANUAL



2025 Edition

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



Florida Office of the Attorney General

Volume 47

Section 286.011, *Florida Statutes*

Government in the Sunshine Law

Sunshine Law - Scope

- ▶ Florida's Government in the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels (including CDDs and other special districts).
- ▶ It applies to any gathering (formal or informal) of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.
 - ▶ Exceptions discussed later in this presentation.
- ▶ Does not apply to Supervisors acting individually.
 - ▶ Supervisors are permitted to discuss District business with District staff and private citizens so long as no additional Supervisors are present.

Sunshine Law - Scope

Parris v. State, 359 So. 3d 1178 (Fla. 4th DCA 2023)

- ★ “Meetings 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.”
- ▶ “Those who engage in such activity widely open themselves to allegations that some aspect of the governmental decisional process has unlawfully occurred behind closed doors.”
- ▶ “Any aspect of the decisional process . . . [even the most mundane action] is part of the official decisional process and must be wide open and advertised in advance to the public.”

Sunshine Law - Scope

- ▶ “Meetings of two or more fellow government officials” includes:
 - ▶ In-person conversations
 - ▶ Telephone conversations
 - ▶ Texts and emails
 - ▶ Including cc’ing other Supervisors
 - ▶ Social media posts
 - ▶ More on this later
- ▶ **DOES NOT** apply to candidates for office (unless candidate is an incumbent seeking reelection).
 - ▶ Candidate who runs unopposed may not be subject to Sunshine Law until election occurs.
- ▶ **DOES** apply to members-elect.

Sunshine Law - Scope

- ▶ Advisory Boards vs. Fact-Finding Committees
 - ▶ Sunshine law DOES apply to Advisory Boards but DOES NOT always apply to Fact-Finding Committees.
- ▶ What's the difference between an Advisory Board vs. a Fact-Finding Committee
 - ▶ Distinguishing factor = decision-making authority
 - ▶ Advisory Board carries decision-making authority delegated by the Board of Supervisors.
 - ▶ Fact-Finding Committee has no decision-making authority.
- ▶ Beware of “recommendations”
 - ▶ A board or committee who makes recommendations to the Board of Supervisors may be found to wield decision making authority, even if they were initially appointed to only be “fact-finding.”

Sunshine Law - Pitfall

- ▶ Avoid using District staff as conduits for communication between Supervisors.
 - ▶ Individual Supervisors are free to discuss District business with District staff, but Sunshine Law is implicated when Supervisors attempt to use District staff to communicate or conduct District business with other Supervisors.
 - ▶ For example:
 - ▶ A Supervisor's requests the District Manager to poll the rest of the Supervisors on how they intend to vote on a matter due to come before the Board.
 - ▶ A Supervisor conducting a field inspection with field/amenities staff asks the staffer how other Supervisors feel about a particular matter the Board is set to consider.
 - ▶ A Supervisor requests District counsel to relay that Supervisor's opinion on a legal matter affecting the District to other Supervisors.
- ▶ Avoid putting yourself and District staff in compromising positions!

Sunshine Law - Pitfalls

- ▶ Married couples serving on the same Board
 - ▶ It is not a *per se* violation if spouses serve on the same Board, so long as they adhere to Sunshine Law requirements.
- ▶ HOAs
 - ▶ Sunshine Law does not apply to HOAs (they are governed by other laws), but Sunshine Law will still apply to CDD Supervisors also serving on HOA boards.
 - ▶ Don't discuss District business in an HOA setting if there are other CDD Supervisors present.
 - ▶ If another CDD Supervisor also serves on the HOA board, we recommend advertising the HOA meetings as workshops.
- ▶ Interaction with other CDD Supervisors
 - ▶ 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

Sunshine Law - Pitfalls

▶ Social Media

- ▶ Social media posts by public officials and governing bodies have been found to constitute public records and are therefore subject to Sunshine Law.
- ▶ Risk > Reward
 - ▶ You can't control who engages with your social media posts.
 - ▶ Hypothetical: Supervisor A makes a post about CDD business. Supervisor B responds to the post in a comment or makes their own post to respond on the topic.
 - ▶ Sunshine Law Violation? Likely yes! Two Supervisors discussing District business outside of a noticed public meeting amounts to a Sunshine Law violation, regardless of the medium for communication.



POP QUIZ: Sunshine Law

- ▶ Determine if the following interactions are permissible or impermissible under Florida's Sunshine Laws:
 1. Supervisor A hosts a birthday party and invites his fellow Supervisors to join. The group discusses sports, weather, and the national political landscape.
 2. Supervisor B meets off-site with the District Engineer to discuss the scope of work for proposed stormwater structure repairs. Supervisor B asks the District Engineer if the “cheapskate Supervisors” are planning to authorize the project.
 3. The Board of Supervisors appoints a group of five residents to evaluate other local CDDs to determine how many stormwater ponds each district has. The group carools together to visit the other local districts to count all the ponds.
 4. A resident posts in the neighborhood's community Facebook group to report an ongoing issue with the District's landscaping vendor. Supervisors C and D both independently comment on the resident's post to share their opinion on the matter.

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Sunshine Law - Exceptions

- ▶ Assume there are no exceptions to Sunshine Law unless specifically provided by statute and confirmed by counsel.
- ▶ Public Records law vs. Sunshine Law - walking a fine line
 - ▶ Just because some public records are exempt from disclosure does not mean that a meeting where such public records are discussed is not subject to Sunshine Law.
 - ▶ Florida's Attorney General has opined that if confidential records are to be discussed, the meeting must still be open to the public, but take steps to ensure confidential identifying information is not disclosed (ex. advertising a closed security session).



Sunshine Law - Exceptions



Discussion of Litigation - Shade Sessions

- ▶ A closed-door meeting can be held between the Board and its attorney to discuss pending litigation under the following conditions:
 1. The attorney advises the Board that advice concerning the litigation is desired.
 2. The subject matter of the meeting is limited to settlement negotiations or strategy related to litigation expenditures.
 3. The meeting is recorded by a court-reporter.
 4. Reasonable public notice is given stating the date, time, and specifically naming all persons who will attend the meeting.
 5. The transcript becomes public record upon conclusion of the litigation.

Sunshine Law - Exceptions



Shade sessions cont'd

- ▶ Requirement of pending litigation
 - ▶ The threat of litigation is not enough. The District must presently be a party to a proceeding before a court or administrative agency.
- ▶ Permitted discussions during shade sessions
 - ▶ Strictly confined to settlement negotiations or strategy related to litigation expenditures
 - ▶ Any vote on a decision to take action must be taken “in the sunshine” upon conclusion of the shade session.
- ▶ Only the Board, Board’s attorney(s), and the court reporter are authorized to attend shade sessions.
- ▶ “Conclusion” of litigation
 - ▶ Final judgment or dismissal with prejudice
 - ▶ Note: There is a legal distinction between dismissal with vs. without prejudice.

Sunshine Law - Exceptions



Security/Fire Safety sessions

- ▶ The portion of a meeting that would reveal a security or fire safety system plan or portion thereof made confidential and exempt by section 119.071(3)(a), *Florida Statutes*, is exempt from open meetings requirements.
 - ▶ Section 119.071(3)(a), *Florida Statutes*, provides an exemption from the Public Records Act for a “security or fire safety system plan.”
- ▶ An exempt portion of a meeting should not be recorded or transcribed.
- ▶ Examples:
 - ▶ Preliminary discussion regarding general security concerns = likely not exempt and may be discussed “in the Sunshine”
 - ▶ Discussion of location/placement of security cameras = are confidential and exempt and must be discussed in an advertised, confidential meeting

Sunshine Law - Exceptions



Purchasing meetings

- ▶ The 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.
 - ▶ Competitive solicitation = 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.
- ▶ The recording and any records presented at the exempt portion of the meeting are exempt from public disclosure until the District provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

POP QUIZ: Sunshine Law Exceptions

- ▶ Determine whether or not a Sunshine Law exception would apply to each of the following scenarios:
 1. The Board of Supervisors holds a closed session to review responses to a Request for Qualifications for District Engineering Services.
 2. The Board of Supervisors holds a closed session to discuss the location of additional security cameras to be installed throughout the District.
 3. The Board of Supervisors holds a closed session with District Counsel to discuss preparation and strategy for upcoming depositions for a lawsuit to which the District is a party.
 4. A vendor who was not selected in a closed, competitive bid process for District landscaping services submits a request to the District Manager for copies of the prevailing bid package 10 days after the Board selected the prevailing bid, but before notice of the Board's decision was sent to any of the bidders.

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Public Meetings

Public Meetings - Requirements

- ▶ Three basic requirements for meetings to comply with Sunshine Law:
 1. Meeting must be open to the public.
 2. Reasonable notice of the meeting must be given.
 3. Minutes of the meeting must be taken, promptly recorded, and open to public inspection.



Public Meetings - Requirements

“Open to the public”

- ▶ Meetings must be:
 - ▶ In the county where the District is located; and
 - ▶ Open to the whole public, not just District residents; and
 - ▶ In a location that does not discriminate or restrict access.
- ▶ Be mindful of gates or similar access restrictions. Meetings can be in buildings located behind gates, so long as anyone seeking to attend the meeting is allowed in.
- ▶ Opportunity to be heard via public comment is required, but reasonable policies governing public comment are permitted.
 - ▶ Standard time limit for individual public comment (usually 3 min.)
 - ▶ Anti-abuse/harassment policies
- ▶ No whispering/side conversations between Supervisors. Discussions must be audible!

First Amendment concerns

Public Meetings - Requirements

“Reasonable notice”

- ▶ Reasonableness is fact dependent, but generally 7 days advance published notice is acceptable.
 - ▶ Exceptions for emergencies (health, safety, and welfare) and special meetings - still recommended to provide at least 24 hours notice
- ▶ Meeting notice published in newspaper and on District’s website
- ▶ Notice must contain:
 - ▶ Date, time, and place of the meeting
 - ▶ An agenda or statement of subject matter to be considered
- ▶ Special hearings, such as budget/assessment hearings or rule development hearings, require more specific timing for publication of notices.
- ▶ District’s Rules of Procedure may provide more specific requirements for content and timing of notices

Public Meetings - Requirements

“Reasonable notice”

▶ Meeting agenda:

- ▶ Required to be made available and posted on the District’s website 7 days in advance and remain posted for 1 year thereafter.
 - ▶ Does not need to contain all meeting backup
- ▶ Agenda can be amended for “good cause.”
- ▶ Board is not required to adhere only to items included in the agenda.
 - ▶ State wants to allow flexibility to discuss matters of importance that come before the Board without the need for it to be included in the agenda.
 - ▶ Practical Tip: If a controversial matter is not included in the agenda, the Board may want to defer action on such a matter until it is included in an agenda in advance of a meeting to avoid any Sunshine Law scrutiny.

Public Meetings - Requirements

“Minutes must be taken”

- ▶ Minutes = “a brief summary or series of brief notes or memoranda reflecting the events of the meeting; accordingly, a verbatim transcript is not required.”
 - ▶ Should include a record of all votes cast (identity of the individual and the vote they cast)
 - ▶ Tape recording is not required but often makes things easier. Note that these recordings are subject to Public Records laws.
- ▶ Minutes are not “final” until approved by the Board.
- ▶ Minutes are open to Public Records inspection as soon as they are drafted.
- ▶ Minutes must still be recorded for workshops.

Public Meetings - Requirements

In person quorum requirement

- ▶ No less than 3 Supervisors are required to be present in person to constitute a quorum.
- ▶ Boards may only conduct meetings by teleconferencing or other technological means if they are authorized to do so by law or if the in-person requirement for constituting a quorum is lawfully suspended during a state of emergency.
 - ▶ Recent example = Covid-19
- ▶ Supervisors attending via teleconferencing may still cast votes.

Public Meetings - Requirements

Voting

- ▶ Abstention is not allowed unless a Supervisor has a declared, legal conflict of interest!
 - ▶ If the Board is taking a vote, all Supervisors who do not have a declared, legal conflict of interest must cast a vote.
- ▶ Proxy voting is not permitted for Supervisors on agenda items.
 - ▶ Note: This is not the same as permissible proxy voting in a landowner election.
- ▶ Secret ballots are not permitted and constitute a violation of Sunshine Law.
 - ▶ Written ballots are permissible so long as the votes are announced openly at a public meeting, the name of the person who voted and their selection are written on the ballot, and the ballots are maintained and made available for public inspection.

Public Meetings - Requirements

Workshop meetings

- ▶ Workshops are generally reserved for informal discussions during which no official action is to be taken by the Supervisors.
- ▶ Sunshine Law still applies.
- ▶ Notice requirements still apply.
- ▶ Minutes requirement still applies.
- ▶ In person quorum requirement does not apply because no formal action will be taken.
 - ▶ Supervisors and members of the public can still attend and participate via digital means.

Remedies and Penalties (Sunshine Law)

Remedies and Penalties

For violations of Sunshine Law:

▶ Criminal penalties

- ▶ Knowing violation of Sunshine Law = 2nd degree misdemeanor
- ▶ Up to 60 days in jail
- ▶ Up to \$500 fine

▶ Removal from office

- ▶ 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.
- ▶ If convicted, the officer may be removed from office by executive order of the Governor.

▶ Non-criminal infractions

- ▶ Any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500.

Remedies and Penalties

For violations of Sunshine Law:

▶ Attorneys' fees

- ▶ Reasonable attorneys' fees will be assessed against a Board found to have violated the Sunshine Law.
- ▶ Attorneys' 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.
- ▶ Reasonable attorneys' fees may be assessed against an individual filing an action to enforce Sunshine Laws if the court finds that it was filed in bad faith or was frivolous.

▶ Civil Remedies

- ▶ Injunctive relief = Court prohibits a specific action (usually going forward for Sunshine Law violations)
- ▶ Declaratory relief = Court declares/clarifies the parties' rights

Case Study: St. Johns County Airport Authority Board



Public Records

Public Records - Scope

- ▶ Florida's Public Records Law = right of access to the records of government entities and private entities acting on their behalf
- ▶ Applies to all materials made or received by an agency in connection with the transaction of official business (absent any exceptions)
 - ▶ “[A]ll 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.”
 - ▶ No “unfinished business exception” - Public Records law also applies to notes and drafts!



Public Records - Scope

Application to Private Organizations:

- ▶ Public Records Law applies to private entities “acting on behalf of a public agency.”
 - ▶ Usually, private entities contracting with public agencies or receiving public funds, but receiving public funds alone is not enough.
- ▶ Two tests to determine if a private entity is subject to Public Records Law:
 - ▶ “Totality of factors” test
 - ▶ Delegation of function test
 - ▶ When a public entity delegates a statutorily authorized governmental function to a private entity

Public Records - Scope

Application to Private Organizations:

► “Totality of factors” test

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.

Public Records - Scope

Application to Private Organizations:

- ▶ Contract requirements:
 - ▶ All government contracts for services must contain specific provisions requiring the contractor to comply with public records laws.
 - ▶ Required statement for public records custodian's contact information
 - ▶ Governmental entities have the automatic right to terminate an agreement if contractor refuses to comply with Public Records laws.

27. **PUBLIC RECORDS.** Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is **PUBLIC RECORDS CUSTODIAN** (the "Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of this Agreement's term and following the contract term if Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by Contractor, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS CUSTODIAN AT [PHONE], [EMAIL], OR [ADDRESS].

Public Records

Covered records and discussion of exemptions:

- ▶ Electronic records
 - ▶ Databases and files
 - ▶ Email and texts
 - ▶ Social media
- ▶ Financial records
 - ▶ Audit reports
 - ▶ Bids, proposals, financial statements
 - ▶ Budgets
- ▶ Investigative records (non-law enforcement)
- ▶ Litigation records
- ▶ Security records

Public Records

Electronic records:

▶ Databases and files

- ▶ Calendars, databases, and word processing files stored in agency computers all constitute public records.
- ▶ Must ensure that the method by which electronic records are stored is still capable of providing data in a common format to the public

▶ Email and texts

- ▶ Digital messages sent or received by public officials are subject to disclosure, including personal email addresses if used to conduct District business and phone numbers (possible exemptions for personal identifying information or spam)
- ▶ Do not delete/destroy digital records - retention requirements still apply!

▶ Social media

- ▶ If you post or comment regarding District business, you are responsible for complying with Public Records law and retention requirements.

Public Records

Financial records:

- ▶ **Audit reports**
 - ▶ Audit reports are subject to disclosure upon presentation to the Board (notes or drafts of audit reports are exempt).
- ▶ **Bids, proposals, financial statements**
 - ▶ Exemption for sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation until notice of an intended decision is provided or until 30 days after opening, whichever is earlier.
 - ▶ Financial information necessary to verify the financial adequacy of a prospective bidder per a public agency's request is also exempt if the bidder follows exemption requirements. The District does not have an affirmative obligation to keep a bidder's financial information exempt from disclosure.
- ▶ **Budgets**
 - ▶ Budgets and working papers used to prepare them are subject to disclosure.
 - ▶ See separate requirements for posting of District's annual budget

Public Records

Investigative records:

- ▶ In the absence of an exemption, investigative records made or received by public agencies are open to public inspection.
- ▶ Discrimination investigations
 - ▶ 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, and marital status are exempt until the investigation becomes inactive, or the complaint or other record is made part of the record of any hearing or court proceeding.
- ▶ Employee investigations
 - ▶ 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 of disciplinary action.
- ▶ Ethics investigations
 - ▶ A complaint and records relating to investigation conducted by the Commission on Ethics 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 of a violation exists.

Public Records

Litigation records:

- ▶ Attorney-client communications
 - ▶ Public Records Act applies to communications between attorneys and governmental agencies; there is no general privilege which exempts these communications from disclosure.
 - ▶ This is different than the normal standard for attorney-client privilege.
- ▶ Attorney work product exemption
 - ▶ Public records that were 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 civil or criminal litigation or imminent adversarial administrative proceedings, is exempt until the conclusion of the litigation or adversarial administrative proceedings.
 - ▶ If a court finds that the record was improperly withheld, the party seeking the record may be awarded reasonable attorneys' fees and costs in addition to any other remedy ordered by the court.
- ▶ **District Counsel is the District's counsel**, not counsel for individual Supervisors.

Public Records

Security records:

▶ Blueprints

- ▶ Building plans, blueprints, schematic drawings, and diagrams which depict the internal layout and structural elements of a building or other structure owned or operated by an agency are exempt from disclosure.
 - ▶ Can still be disclosed to another governmental entity, to a licensed professional performing work on the structure, or if required for competitive bidding, but recipients have to keep this information confidential.

▶ Security system records

- ▶ Security or fire safety plan for property owned or leased by an agency is exempt from disclosure.
 - ▶ “Plan” = photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations relating to the structure or the system itself

▶ Surveillance video recordings

- ▶ Surveillance video falls under the definition of “plan” described above, however:
 - ▶ Surveillance can be disclosed 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.

POP QUIZ: Public Records

- ▶ Determine which if the following records would be exempt from disclosure:
 1. A Supervisor's 401(k) account statements (identifying account information redacted).
 2. Email communications between District Counsel and individual members of the Board of Supervisors.
 3. The blueprints and/or as-builts for the District's amenity clubhouse (requested by a resident).
 4. Text messages sent between District Supervisors on their personal cell phones about District business.

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Maintenance, Storage, and Retention of Records

Maintenance, Storage & Retention of Records

- ▶ Maintenance and storage:
 - ▶ All public records should be kept in the buildings in which they are ordinarily used.
 - ▶ Records should be kept in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible.
 - ▶ In practice, most new records created are digital, and physical records are typically scanned and uploaded to remote accessible servers.
 - ▶ 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.
 - ▶ If you create a public record (text, email, social media post, etc.) create a copy and provide it to the District Manager as soon as possible.



Maintenance, Storage & Retention of Records



▶ Retention of Records:

- ▶ Agencies typically follow the records retention schedules adopted by the Division of Library and Information Services of the Department of State
 - ▶ Applies to all public records, even those stored on personal devices
- ▶ Retention schedules set the minimum amount of time different types of public records must be kept before disposal is permissible.
- ▶ As applied to CDDs:
 - ▶ Districts can extend the amount of time a record is kept, but can't shorten the amount of time beyond what is required by the retention schedules (GS1-1L and GS3)
 - ▶ Districts having issued tax-exempt bonds are subject to additional federal records retention laws.
 - ▶ Districts typically follow the applicable retention schedule as written, but may also extend retention timeline for documents related to:
 - ▶ Bond issuance and proceeds, legal advertisements, audits, financial reports, real property records, minutes, incident reports, etc.
- ▶ **Don't destroy any records without first consulting with your District Manager!**

Providing Public Records

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Providing Public Records

Parameters for Public Records Requests

- ▶ Public records may 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 public records.
 - ▶ Reasonable conditions = regulations permitting the custodian of records to protect records from alteration, damage, or destruction, not conditions that the requester has to fulfill to access the records
- ▶ The requester is not required to explain the reason for a public records request.
- ▶ A request cannot be denied because it is “overbroad.”
- ▶ An agency may not require that public records requests be in writing or require the requester to identify himself or herself.

Providing Public Records

Parameters for Public Records Requests

- ▶ The only delay permitted in fulfilling a public records request is a “reasonable” amount of time for the custodian to retrieve the record and redact those portions of the record that are exempt.
- ▶ An agency is not required to comply with a “standing” request for records that may be created in the future.
- ▶ Agencies are not required to answer questions about public records (other than how to obtain them), or to create new records.
- ▶ Agencies are permitted to charge a fee:
 - ▶ Up to 15 cents per one-sided copy for copies that are 14 inches by 8.5 inches or less. An additional 5 cents may be charged for two-sided copies. For other copies, the charge is the actual cost of duplication of the record. Cost of duplication = the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost
 - ▶ “Reasonable” service charge for “extensive” use of clerical/tech resources

Providing Public Records

How to handle an “in-person” public records request

1. Don't panic!
2. If you're a Supervisor, tell the requester you are not the records custodian.
 - ▶ Provide the records custodian's contact information (DM's office) or explain how the requester can contact the records custodian.
3. Acknowledge receipt of the public records request, but offer no specific indication of whether, how, or when the records will be made available.
4. Get a written description of the materials being requested, if possible.
5. Ask how the requester would like to be contacted with the District's response to the request.
6. Don't offer any information regarding the materials sought.

Public Records Requests - 1st Amendment Audits



Remedies and Penalties (Public Records)

Remedies and Penalties

- ▶ Voluntary mediation program
 - ▶ Attorney General's office offers an informal mediation program as an alternative resolution for open government disputes.
- ▶ Civil action
 - ▶ Civil action may be brought against an agency to enforce a public records request.
 - ▶ Requester must show that they made a specific request for public records, the agency received it, the requested record exists, and the agency improperly refused to produce the record in a timely manner.
 - ▶ Complaints regarding public records request may be entitled to an expedited hearing.



Remedies and Penalties

▶ Injunction

- ▶ Injunctive relief is appropriate where there is a demonstrated pattern of noncompliance with the Public Records Act, together with a showing of likelihood of future violations.
- ▶ Not appropriate if the acts complained of have already been committed and there is no threat of repeat offenses

▶ Declaratory relief

- ▶ An agency can't respond to a public records request by asking a court if they have to comply.

▶ Damages

- ▶ Limited monetary damages available, as described below

▶ Attorneys' fees

- ▶ If a civil action is filed to enforce a public records request, the court shall assess and award the reasonable costs of enforcement including reasonable attorneys' fees against the responsible agency if the court determines that the agency unlawfully refused the request.

Remedies and Penalties

- ▶ Criminal vs. non-criminal penalties
 - ▶ Criminal = A public officer who knowingly violates public records law 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.
 - ▶ Mere negligence is not enough - violation must be committed “knowingly”
 - ▶ Non-criminal = A violation of any provision of Ch. 119, Florida Statutes, by a public officer is a noncriminal infraction, punishable by fine not exceeding \$500.

POP QUIZ: Public Records Requests

- ▶ Determine if the following statement regarding public records requests are true or false:
 1. A resident approaches a Supervisor on the street and verbally requests all records related to the District's pool vendor. The resident states that all representatives of the District are required to produce public records upon request, and that their request must be fulfilled within 48 hours.
 2. A District was within its rights to sue a resident and request the court for declaratory relief after a particularly persistent resident submitted a new public records request every single week.
 3. An individual using an anonymous email account submitted a valid public records request when they requested non-exempt records, refused to identify themselves, and refused to provide a reason for their request.
 4. The author of the State's "Government in the Sunshine" Manual, who is also a public records custodian for a State agency, was properly charged with a criminal violation after they refused to fulfill valid public records requests.

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Updates from 2025 Legislative Session

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- ▶ Changes to Notice Requirements for Rule Development and Rulemaking
 - ▶ Notice of Rule Development must now be published at least seven (7) days prior to the Notice of Rulemaking and thirty-five (35) days prior to the public hearing on the proposed rule.
 - ▶ Notice of Rule Development must now also include:
 - ▶ (1) the grant of rulemaking authority for the proposed rule and the law being implemented; and
 - ▶ (2) the proposed rule number
 - ▶ Notice of Rulemaking must now also include:
 - ▶ (1) the proposed rule number;
 - ▶ (2) the name, email address, and telephone number of the staff member who may be contacted regarding the intended action; and
 - ▶ (3) the website where the statement of estimated regulatory costs may be viewed in its entirety, if applicable.
 - ▶ Resulting effects on Districts
 - ▶ Adoption or amendment of District rules requiring notice now requires a three-month runway (one meeting to set the public hearing, 35 days to notice the hearing, and a meeting to adopt the rule/amendment).

Updates from 2025 Legislative Session

- ▶ Changes to Competitive Purchases Criteria for Consideration
 - ▶ Districts now prohibited from penalizing a bidder for performing a larger volume of construction work for the District or rewarding a bidder for performing a smaller volume of construction work for the District on a public works project.
 - ▶ Public works project = an activity that is paid for with any local or state-appropriated funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof owned in whole or in part by any political subdivision.
 - ▶ Public works project **does not** = the provision of goods, services, or work incidental to the public works project, such as security services, janitorial services, landscape services, maintenance services, or any other services that do not require a construction contracting license or involve supplying or carrying construction materials for a public works project.

Questions?