



Office of the General Counsel

- Ethics Training
- School Board Workshop
October 25, 2016



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Part One – Open Government Overview

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Open Government Overview

**A presentation for the Broward
County School Board October 25, 2016**



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SUNSHINE LAW

- Florida's Government in the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. In the absence of statutory exemption, it applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

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Scope of the Sunshine Law

- Sunshine Law prohibits private discussions between board members about board business, either in person or by telephoning, emailing, texting or any other type of electronic communication (i.e Facebook, blogs).

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Scope of the Sunshine Law

- While an individual board member is not prohibited from discussing board business with staff or a nonboard member, these individuals may not be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

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SCOPE OF THE SUNSHINE LAW

There are three basic requirements:

- 1) Meetings of public boards or commissions must be open to the public
- 2) Reasonable notice of such meetings must be provided; and
- 3) Minutes of the meetings must be prepared and open to public inspection.

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SCOPE OF THE SUNSHINE LAW

- The Sunshine Law applies to advisory boards created pursuant to law or ordinance or otherwise established by public agencies or officials.

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Scope of the Sunshine Law

- Staff meetings are not normally subject to the Sunshine Law.
- However, staff committees may be subject to the Sunshine Law if they are deemed to be part of the “decision making process” as opposed to traditional staff functions like factfinding or information gathering.

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Scope of the Sunshine Law

- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote).
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

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Board meetings

- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

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Board meetings

- Section 286.0114, F.S., provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from “maintaining orderly conduct or proper decorum in a public meeting.”

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Penalties

- Civil action
- Criminal penalties
- Suspension or removal from office

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Recent cases and AGOs

1. **Individual barred from public meetings.** *Ribaya v. Board of Trustees*, 162 So. 3d 348 (Fla. 2d DCA 2015)
2. **Use of federal mediation to “thwart” Sunshine Law.** *Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014), review denied, No. 14-2490 (Fla. February 24, 2016).

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3. **Lobbyist acting as “liaison”** *State v. Dorworth*, No. 14-5841 (Fla. Orange Co. Ct. October 21, 2014), affirmed, No. 14 AP-48 (Fla. 9th Cir. Ct. August 19, 2015). (online at myfloridalegal.com).
4. **Consequences of unauthorized disclosure of matters discussed during a shade meeting.** Inf. Op. to Pritt, November 26, 2014

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• 5. Jurisdiction of courts over civil suits alleging Sunshine Law violations. *Allen v. United Faculty of Miami-Dade*, 41 F.L.W. D1456 (Fla. 3d DCA June 22, 2016).

• 6. Whether exemption for attorney-client “shade” meetings applies to discussions of pending state and federal investigations where there is no ongoing judicial or administrative proceeding. Inf.AGO to General Counsel for North Broward Hospital District, February 17, 2016.

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PUBLIC RECORDS LAW

• Florida’s Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.

• If material falls within the definition of “public record” it must be disclosed to the public unless there is a statutory exemption. The record must also be retained in accordance with Department of State retention schedules.

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The term “public records” means:

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” (includes electronic communications like text messages, emails).

b) Made or received pursuant to law or ordinance or in connection with the transaction of official business

c) By any agency [including a private entity acting ‘on behalf of a public agency]

d) Which are used to perpetuate, communicate, or formalize knowledge

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PROVIDING PUBLIC RECORDS

- a) Public records cannot be withheld at the request of the sender
- b) A requester is not required to show a “legitimate” or “noncommercial interest” as a condition of access
- c) A request cannot be denied because it is “overbroad”
- d) Unless authorized by another statute, an agency may not require that public records requests be in writing or require the requester to identify himself or herself

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PROVIDING PUBLIC RECORDS

- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days).
- The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.

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PROVIDING PUBLIC RECORDS

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- An agency is not required to create a new record

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PROVIDING PUBLIC RECORDS

- Chapter 119 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 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. Actual cost of duplication means the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost.

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Fees

- In addition to the actual cost of duplication, an agency may impose a reasonable service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.

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Retention

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained.

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Penalties

- a) Criminal penalties
- b) Civil action
- c) Attorney's fees

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Recent cases and AGOs

- 1. **Indigent request for free copies of records.** *Milner v. State*, 41 F.L.W. D1738 (Fla. 4th DCA 2016).
- 2. **Redaction of names of students contained in university disciplinary records and complaints of misconduct by student government officers.** *Knight News v. University of Central Florida*, 41 F.L.W. D1897 (Fla. 5th DCA April 8, 2016).

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- 3. **Standard for awarding attorney's fees to prevailing requester in public records cases.** *Board of Trustees Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120 (Fla. 2016).

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• 4. **Payment in advance for redaction costs.** *Morris Publishing Group v. State*, 154 So. 3d 528 (Fla. 1st DCA 2015).

• 5. **Public records status of unopened job applications.** AGO 15-10

• 6. **Justification for delay in responding to requests.** *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396 (Fla. 4th DCA 2016).

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• 7. **Agency conditions on access to public records.** *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332 (Fla. 1st DCA 2015).

• 8. **RICO action filed by city against public records requester.** *Town of Gulf Stream v. O'Boyle*, No. 15-13433 (11th Cir. June 21, 2016).

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Part Two – Ethics

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Statutorily-Required Annual
Ethics Training for Broward
District School Board Members
October 25, 2016



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Presented by C. Christopher
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What is Required "Ethics"
Training and Who is
Required to take it?

F.S. 112.3142
Commission on Ethics Rule 34-7.025, Florida Administrative Code
CEOs 13-15, 13-24, 14-29, 15-05

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How is the Taking of the Training Memorialized/Documented and how is the Training Reported?



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Three broad components of “ethics training”

- Ethics laws
- Sunshine Law (open meetings law)
- Public Records laws

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Ethics laws primarily are found in Article II, Section 8, Florida Constitution, and Part III, Chapter 112, Florida Statutes



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Ethics laws are of several different types

- Financial Disclosure laws
- Gift laws
- Voting Conflict laws
- Conflicting Employment or Contractual Relationship laws
- Intentional Bad or Improper Conduct laws
- Post-Public-Officeholding (Revolving Door) laws
- other

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Intentional Bad or Improper Conduct laws




F.S. 112.313(2)
F.S. 112.313(6)
F.S. 112.313(8)

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Voting Conflict laws

F.S. 112.3143(3)(a)
CE Form 8B



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Conflicting Employment or Contractual Relationship laws



F.S. 112.313(3)
F.S. 112.313(7)(a)
F.S. 112.313(10)
F.S. 112.3125
F.S. 112.31425
F.S. 1042(12)(i)

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Post-Public-Officeholding (Revolving Door) laws



F.S. 112.313(14)
F.S. 112.313(13)

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Financial Disclosure laws



Article II, Section 8, Florida Constitution
F.S. 112.3144
F.S. 112.31455
CE Forms 6, 6F, 6X

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Other laws or standards of conduct

- Sunshine Law
- F.S. Chapter 119 (public records laws)
- State criminal laws
- Federal criminal laws
- K-20 Education Code
- Additional local agency standards



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The End; and thank you.

It is always a pleasure to visit Broward District Schools.

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C. CHRISTOPHER "CHRIS" ANDERSON, III received his J.D. from The Florida State University College of Law, after majoring in history at Huntingdon College in Montgomery, Alabama. Chris is a member of The Florida Bar and its Administrative Law Section, the Jefferson County Bar Association, the Florida Government Bar Association, and the State General Counsels' Association. He serves as General Counsel and Deputy Executive Director of the Florida Commission on Ethics, an agency he has served in a number of positions over many years. Previously, he served as an Assistant State Attorney in the Second Circuit, as an Assistant Public Defender in the Seventh and Second Circuits, as a Senior Attorney for the Department of Insurance, as an Assistant General Counsel for the Department of Corrections, and as a private practitioner. Also, Chris is a past recipient of the Florida Association of County Attorneys' Ethics Award and its Appreciation Award, and he is a frequent speaker on statutory ethics and related topics at Bar CLE programs and other events.

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