

Annual Required Training (Jax Ordinance Section 15.108)

2012 Update Government in the Sunshine & Public Records

What you need to do:



- Read this training module (Powerpoint) on your own time; if you have any questions, call Jason Gabriel (OGC 630-1724) or Carla Miller (502-2254).
- Optional: For more detailed information, you can review the materials from the 2011 comprehensive Sunshine training (links are on the cover email sent to you with this training)
- This powerpoint module needs to be completed by August 31, 2012 at the latest
- Print out the last page of this Powerpoint (attestation that you did the training); sign and give to your ECA to give to Cheryl Brown.

Training Overview

- 1. Government in the Sunshine Review**
- 2. Public Records Review**
- 3. Special Topics:**
Text messages and Facebook

Sunshine Law: Review





THREE THINGS TO REMEMBER:

- Meetings have to be **open** and **accessible** to the public

Meet at City Hall or other “**public location**”. If **not** a public location, it needs to be approved in writing prior to the meeting. (email or call ECO Director, Carla Miller or OGC, Jason Gabriel)

- **Reasonable** advance **notice** of the meeting

Should be more than 24 hours notice, more time may be required depending on matter being discussed; if less than 24 hours notice, it must be an emergency and approved in writing

- Written **minutes** of the meeting (ECA does it; but Council Member should make sure it is done!)

At a minimum, include brief notes reflecting events of meeting and who was there (note lobbyists, public officials/employees and Council members present)

Tape recording with written summary of events is good practice



FOR ECA's:

PLEASE REMEMBER THAT IN ADDITION TO FLORIDA STATE LAW, OUR LOCAL CODE (Chapter 15) HAS ADDITIONAL REQUIREMENTS YOU MUST FOLLOW:

- Notice should include date/time of meeting, place, and subject matter of the meeting (agenda)
- Notice should include: Date/time the notice was posted , who called the meeting and which Council members are expected to attend
- Meetings should not be held in Council Member's offices

Sunshine

Note:

That you are responsible for your ECA's actions

They are posting notices & taking minutes to keep **you** compliant, you are ultimately responsible for what they do.

They cannot seek out the opinion of another Council Member on an issue for you—they (or anyone else) cannot “build a consensus” with other Council Members.

Whispering at noticed meetings can be a violation

Not only does it give the appearance of impropriety, but it can be considered an unnoticed private meeting if you are found to be discussing public business

Moving on...

Public Records



You already know that the law requires...

- **Every public official to permit inspection and copying of public records**
- **Virtually every document made OR received in connection with public business is to be made available for inspection & copying**

Public Records

Did you know that...



The law applies to communications with constituents, city officials, and others involving public business, even if it is on your **private** computer, laptop or **phone**. **It doesn't matter who pays for the device.**

(example: email sent from an old friend to your **personal** email address on your **home computer**, but, it discusses city business—this is a public record)

Public Records

Did you know that...

- **Public records don't include:**

- Personal notes used to prepare other documents; or notes given to your ECA to type up

- Strictly personal email

- Making comments about legislation or public business in an email to a friend makes parts of the email a public record. It is best to have all communications on public business go through your coj email address. This ensures that the public records will be backed up.

- **Public records can only be destroyed per a specific process under state law**

For both the Sunshine & the Public Records laws...

- **The State Attorney or a Grand Jury can get involved, especially with:**
 - Obvious violations of the law
 - High profile situations
- **Private parties (example: Times Union) will sue, especially when it involves:**
 - big contracts; annual budget
 - a citizen's property rights
 - a person's job
- **Judges decide if you were reasonable in what you did**
- **There are possible criminal, civil, and political penalties**
 - jail time (1 year in jail for a knowing violation)
 - fines and/or attorney's fees (\$500 for an unintentional violation)
 - being subpoenaed to give a statement
 - public charges or a trial

Thought

Your willingness to learn and abide by the Sunshine & Public Records laws demonstrates your respect for the constitutional rights of the citizens of Jacksonville and their desire to know about their government. It's not always easy, and we know you all work hard to comply with Florida's laws on this.

Special Topics:

Text messages and Facebook



This section is intended to be a specific review of the law regarding text messages and social media. You all know how fast technology develops; as it does, we have to keep up with what the requirements are under the Sunshine law. This is certainly a challenge, as all tech issues seem to be.

Texting

(a cartoon from the Sun-Sentinel)





Florida law says...

“Public records” means 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, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Fla. Stat. § 119.011



The Supreme Court of Florida says...

we hold that a public record, for purposes of section 119.011(1), is any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.

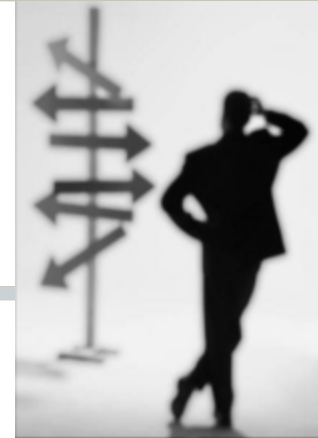
Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc., 379 So. 2d 633, 640 (Fla. 1980)



The Attorney General says...

“The same rules that apply to emails should be considered for electronic communications including Blackberry PINS, SMS (text messaging)..and instant messaging.”

It all depends on the **CONTENT of the message.**



In plain English, that means...

Regardless of what form it comes in,
cave drawing, smoke signal, carrier pigeon, telegram,
handwritten/typed letter, email, text message,
YouTube video, Facebook wall post, etc.,
**if it concerns public business, it is a public
record**

**What matters is the content--what is discussed in
the communication, not the form it comes in.**

Which of these text messages are public records? A test!

A

“Meet u in 5 minutes—let’s get lunch; I’m starving.”

B

“Honey, I am on my way home; should I pick up some ice cream?”

C

“Since there’s no Council meetings next Tuesday, want to go fishing?”

D

“Hi, vote no on bill 2012-678; you know how we feel about these things. See you this weekend, bring your husband; how is his job search coming?”

E

“Don’t forget to pick up the list of people to call that I put on your desk. And, you need to disclose your ex parte meeting with Connie Smith.”

F

“Yeah, a waiver would be required to receive a liquor license for their business if the location is within 1500 ft. of a church or school.” From Planning Dept.

Texts Messages that are not Public Records

Example A:

Text message:

Meet u in 5 minutes—let's get lunch; I'm starving.

This is an example of a personal message. It does not need to be retained. Also, for example, “be back in 15 minutes”; don't forget your briefcase”.

Texts Messages that are not Public Records

Example B:

Text message:

**Honey, I'm on my way home. Should I pick
up some ice cream?**

This is personal. It does not need to be kept.

Texts Messages that are not Public Records

Example C:

Text message between you and another member of the City Council regarding your upcoming fishing trip.

This is personal. It does not need to be kept. On the other hand, a text like this should be retained: From lobbyist to Council Member: “Let’s have dinner tonight to discuss the contract.”

Text Message Examples

Example D:

Text messages between you and your ECA

A text message between you and your ECA regarding any **public business** would be considered a public record and, therefore, must be retained in case there is a public records request for it. Things that are being sent to you that are already on the city computer don't have to be kept (texting you an email that is already on coj email or another copy of your schedule.)

Example E:

Text message between you and a longtime friend discussing proposed legislation.

Out of the blue, you get a text from an old friend; “Hi, vote no on bill 2012-678; you know how we feel about these things. See you this weekend; bring your husband; how is his job search coming?”

Part of this is a public record (first sentence) and should be preserved. You can cut out the private part of the message if ultimately you turn over this communication.

Special Topics:

Example F:

Text message between you and a member of the Planning Department regarding a zoning issue in your district.

This is a public record. Retain it.

Test: Which of these people must keep their text messages discussing public business?

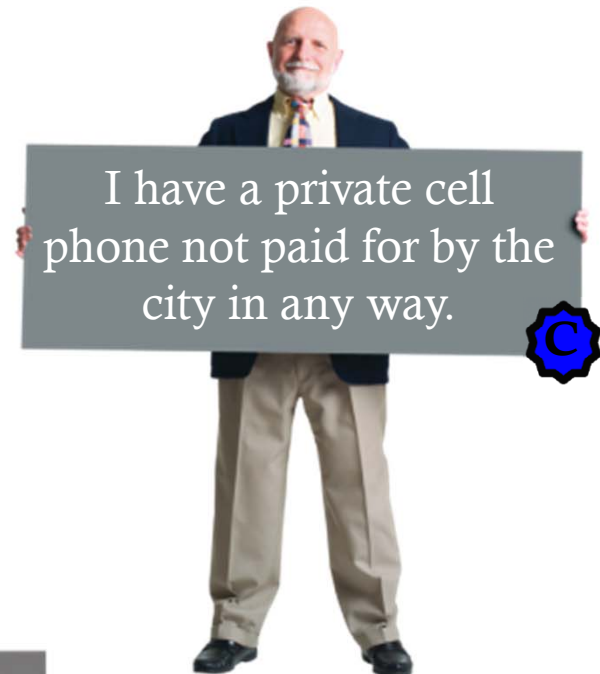
A

I have a city issued phone.



My cell phone is paid for with a stipend from the city.

B

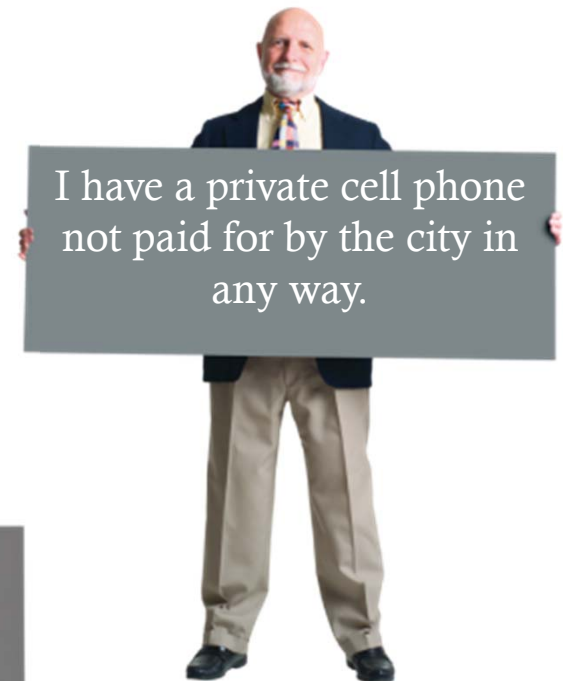
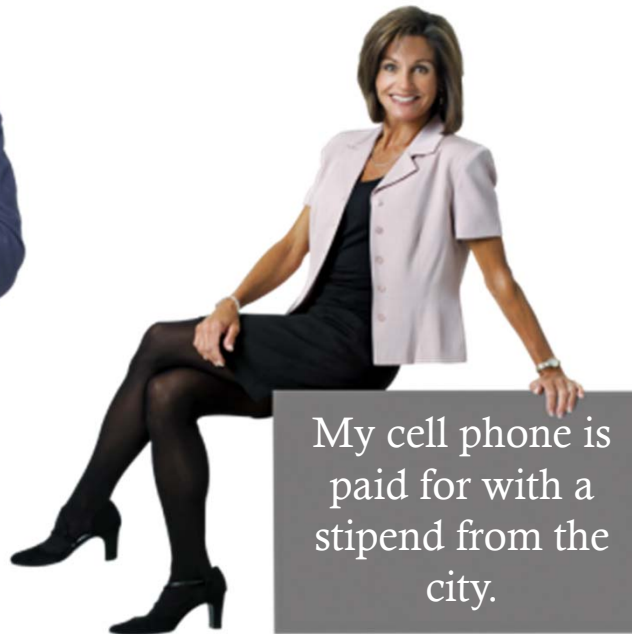


I have a private cell phone not paid for by the city in any way.

C

Answer:

All of them! It doesn't matter who pays for the phone. Any text messages regarding public business must be kept as public records.





SAME principle:

Facebook post discussing a public issue.

You post on your Facebook page a statement on how you feel about a certain budget issue (“I think pension benefits should be increased”); many citizens comment on your “wall” and give you their opinions.

This is a public record. Perhaps Facebook will always retain it, but you can’t be sure. Have your ECA copy the info to an email to your coj email and it will be preserved.

How do you “retain” the text messages that are public records?

Some people may prefer to just not use text messages for public business. But if you do, and have sent or received a text message that is on **public business**, it needs to be retained in case a citizen requests a copy of it.

How do you do this? BACK UP TO COJ EMAIL

1. Check to see if your phone keeps all text messages indefinitely on your phone. (You can export all of them to a coj email for long term retention.)
2. You can send a copy of the text by email to your coj email

IT Dept. can help you with this.

Congratulations!

You have completed the 2012 Sunshine Update training. Your constituents thank you!

Print out your Attestation Form on the next page.

Compliance Attestation

Sunshine Training 2012

I attest that I have studied the materials in this Powerpoint training module. (Please print this one page out, sign, and send to Cheryl Brown.) You have now completed your annual Government in the Sunshine and Public Records law training for 2012 required by Section 15.108 of the Jacksonville Ordinance Code.

Print and Sign Name

Date
