

2015 PUBLIC RECORDS

WHAT IS FLORIDA'S PUBLIC RECORDS LAW AND WHAT DOES IT APPLY TO?



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It is a Guaranteed Constitutional Right

Art. I, Section 24 of the Florida Constitution set forth Florida's Public Records laws and states:

- Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

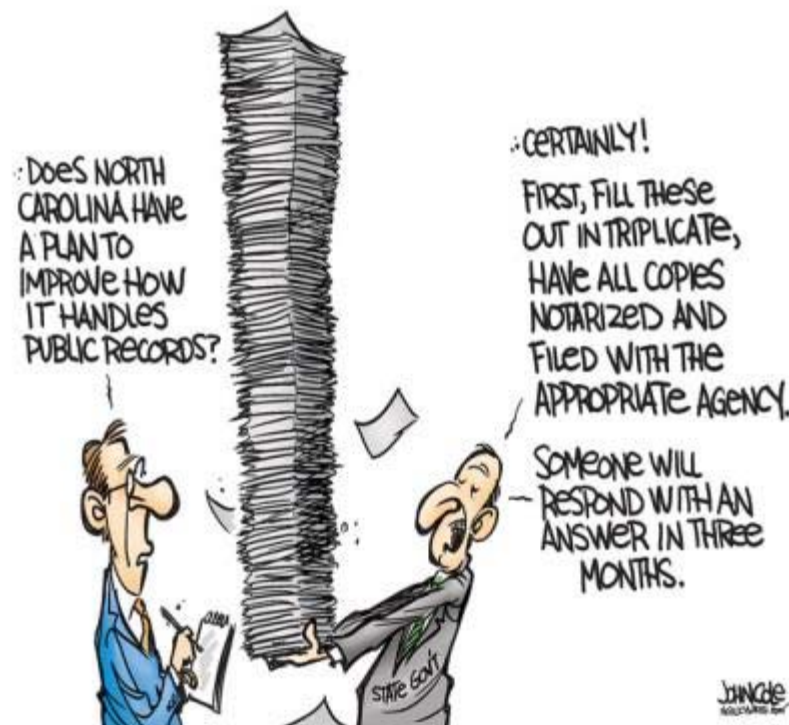
It is Extremely Broad in Scope

- Florida Statutes § 119.011(12) defines “public records” as:

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.

Public Records Requests

- Requests do not have to be made in writing.
- Requests do not have to be for a special or legitimate interest.



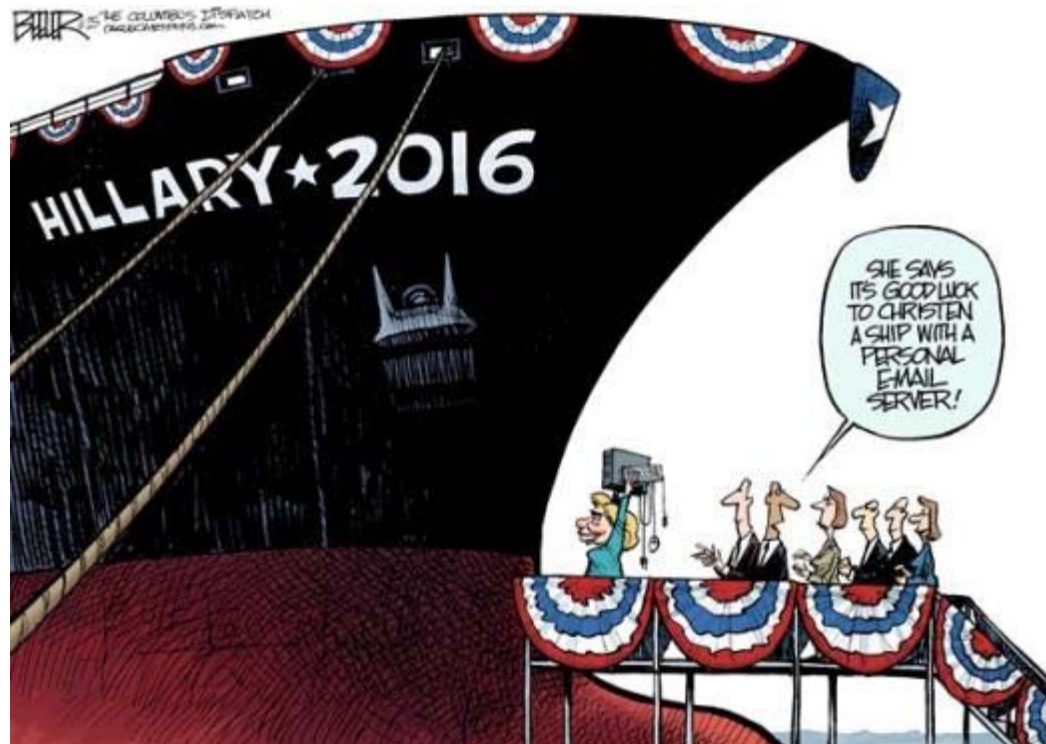
You already know that the law requires...



- 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

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)



Items that have been found NOT to be a Public Record

- (1) **Personal notes** when they are solely for the persons own use in remember things are not a public record. The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission, 823 SO. 2d 185 (Fla. 1st DCA 2002).
- (2) **Private emails** stored in government computers does not automatically become a public record by virtue of that storage. State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003).



What Could Be a Public Record:

- (1) Notes when they are intended to communicate, perpetuate or formalize knowledge. Miami Herald Media Co. v. Sarnoff, 971 So. 2d 915 (Fla. 3rd DCA 2007)
- (2) Text messaging and Blackberry “pinning” - Inf. Op. Att’y Gen. Fla. June 2, 2009.



What is Exempt from the Public Records?

- The Legislature has carved out limited exemptions from the Public Records law all of which are narrowly construed.
- If an exemption is applicable, it must be stated in writing and must contain the statutory citation to the exemption. Fla. Stat. § 119.071.

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.



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.

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.

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.

Consequences of Violations of the Law:

- Knowing violation - 1 year in jail (Criminal Misdemeanor)
- Unintentional violation - \$500 fine (non-criminal penalty)
- Civil Lawsuits
- If it matters enough, someone will sue



Thank You!

