

Seminole County Attorney's Office Presentation – 2012

Public Records

E-Mails

Code of Conduct & Ethics

Facebook and Social Media

Government in the Sunshine

Public Records

Chapter 119, Florida Statutes

- ❖ “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 in connection with the transaction of official business by any agency”.

Public Records

Chapter 119, Florida Statutes

- ❖ If the purpose of a document prepared in connection with official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an agency.
- ❖ The County is not generally required to reformat records to meet the requestor's particular needs.
- ❖ A person's motive in seeking access to public records is irrelevant. The County cannot ask the reason for the public records request.

Public Records

Chapter 119, Florida Statutes

- ❖ Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee.

Public Records

Chapter 119, Florida Statutes

- ❖ A custodian of records must acknowledge requests for public records promptly and respond to such requests in good faith. Although there is no time limit for compliance stated in the Act, the Florida Supreme Court has stated that the only delay permitted “ is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.”

Public Records

Chapter 119, Florida Statutes

❖ Penalties:

- ✓ Individual violation can be prosecuted criminally or in civil court by citizens or companies.
- ✓ The County can be assessed attorneys' fees for failing to comply with a request.
- ✓ A Board member can be removed from office for failing to comply.

Public Records

Chapter 119, Florida Statutes

- ❖ How do you comply if you receive a public records request?
 - ✓ Contact the Seminole County Attorney's Office and you will be directed to the appropriate staff. **Do not delay!**

Common Questions Regarding the Use of E-MAILS

- ❖ What is an inappropriate e-mail?
 - ✓ E-mails that violate County policies & procedures.
 - ✓ Personal e-mails.
 - ✓ Use common sense.
 - ✓ Would you want your children to read it?
 - ✓ Suggestive pictures, foul language, jokes, and political commentary that is either a personal attack, or supports, a policy issue, candidate, elected official or party.

Common Questions Regarding the Use of E-MAILS

- ❖ What should I do if I receive an inappropriate (non-government related) e-mail from a private citizen that I do not know?
 - ✓ Delete the inappropriate e-mail.
 - ✓ Report it to your supervisor.

Common Questions Regarding the Use of E-MAILS

- ❖ What should I do if I receive an inappropriate e-mail from someone I know?
 - ✓ You should respond back that the e-mail is inappropriate and ask that the person stop sending that type of e-mail to your government e-mail address.
 - ✓ Print out a copy of your response.
 - ✓ Delete the inappropriate e-mail.

Common Questions Regarding the Use of E-MAILS

- ❖ What should I do if I receive a threatening e-mail from an employee or private citizen?
 - ✓ Immediately report it to your supervisor.
 - ✓ Do **not** delete the e-mail.
 - ✓ Do **not** respond to the e-mail.

Common Questions Regarding the Use of E-MAILS

- ❖ Should I be using the County e-mail system for personal business?
 - ✓ No; and the County Attorney's Office will not spend time reviewing your e-mails to delete personal e-mails from a public records request.

Common Questions Regarding the Use of E-MAILS

- ❖ What should I do if I accidentally send a government related e-mail to a private citizen?
 - ✓ Ask the private citizen to delete it and not share it with anyone.
 - ✓ Of course, apologize for the inconvenience.

Common Questions Regarding the Use of E-MAILS

- ❖ Who should I contact if I get a public records request for my e-mails?
 - ✓ The County Attorney's Office and your supervisor. **Do not delay!**

Things to Think About Pertaining to the Use of E-Mails

- ❖ Make sure you are sending it to the right address.
- ❖ Do I need to copy the work with the e-mail?
- ❖ How would the e-mail look on the front page of the newspaper with your name on it?

Things to Think About Pertaining to the Use of E-Mails

- ❖ Do you really need to send it?
- ❖ Can the matter be handled with a quick phone call instead of the e-mail?
- ❖ If you are concerned about how it will be interpreted, should you be sending the e-mail in the first place?

Things to Think About Pertaining to the Use of E-Mails

- ❖ If the matter involves an issue in litigation, or likely to be in litigation, call the County Attorney's Office to discuss the matter before sending the e-mail.
- ❖ Use the fax machine or hand delivery for documents that are exempt pursuant to the attorney-client exemption.
- ❖ Keep e-mails to one subject.
- ❖ Make the subject matter clear so that it can easily be identified in a search.

Things to Think About Pertaining to the Use of E-Mails

- ❖ Try to avoid the use of phrases like “the County never....” or “We always....”.
- ❖ Do not use derogatory remarks about other employees or private citizens or companies. For example, “I am tired of working with _____.” “I wouldn’t award them the bid if they were the last contractor on Earth.”
- ❖ Always state the truth.

Code of Conduct & Ethics

As public officers and employees, you should familiarize yourself with Section III, Chapter 112, Florida Statutes, and the Seminole County Code of Conduct.

Part III Chapter 112, Florida Statutes

- ❖ Depending on your position, Section III, Chapter 112, Florida Statutes, governing ethical conduct for public officers and employees may be applicable in the performance of your public duties.

Code of Conduct & Ethics

Seminole County Code of Conduct

- ❖ Conflicting employment or contractual relationship (Section 102.0)
- ❖ Conflict of Interest regarding contracted County work and/or purchase of property, materials or supplies prohibited (Section 103.0)
- ❖ Disclosure of Information (Section 104.0)

Code of Conduct & Ethics

- ❖ Solicitation/acceptance of gifts, gratuities, benefits, or things of value and promoting private businesses (Section 105.0)
- ❖ Bribery (Section 106.0)
- ❖ Additional ethical conduct requirements for members with regulatory responsibilities (Section 107.0)

Code of Conduct & Ethics

- ❖ Additional ethical conduct requirements for reporting individuals and procurement members (Section 108.0)
- ❖ Political Activity (Section 109.0)
- ❖ Use of County property (Section 110.0)
- ❖ Personal mail/telephone calls/visitors (Section 111.0)

Code of Conduct & Ethics

- ❖ Dress and Appearance (Section 112.0)
- ❖ Job-related investigations (Section 113.0)
- ❖ Indictments/Arrests (Section 114.0)
- ❖ Incarceration (Section 115.0)

Code of Conduct & Ethics

- ❖ Drug and/or alcohol use/consumption (Section 116.0)
- ❖ Driving Records (Section 117.0)
- ❖ General Safety Policy (Section 118.0)

If you have any questions concerning the Code of Conduct or ethics, please call the County Attorney's Office at (407) 665-7257.

Facebook & Social Media

- ❖ The content of the Seminole County Facebook pages, including information about the County's friends, is subject to disclosure under Florida's Public Records Act.
- ❖ All communication on Seminole County's Facebook pages regarding County business is subject to Florida's Government in the Sunshine Law.

Facebook & Social Media

- ❖ In light of this, Seminole County should post a warning regarding the implications of the Public Records and Sunshine Law on all of its Facebook pages.

Facebook & Social Media

- ❖ While there is no statutory prohibition against a commission or board member posting comments on a privately maintained website or blog, those members must not discuss matters that may **foreseeably** come before them. It is incumbent upon commission or board members to avoid any action that could be construed as an attempt to evade the requirements of the Sunshine Law.

Facebook & Social Media

- ❖ While there is no prohibition against a commission or board member posting comments on Seminole County's Facebook pages, members of the commission or board must not engage in an exchange or discussion of matters that may **foreseeably** come before the commission or board for action.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ Basic requirements:
 - ✓ Meetings must be open to the public; and
 - ✓ Reasonable notice of such meetings must be given; and
 - ✓ Minutes of the meetings must be taken and promptly recorded.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ Applicable to elected and appointed public boards and to any “gathering” of two or more members of the same board to discuss some matter which may **foreseeably** come before that board for action.
- ❖ Applies to meetings and discussions conducted via phones, computer (e.g. email), and other electronic means.
- ❖ Use of nonmembers (County staff and Commissioners’ Aides) as liaisons to circulate information/thoughts of individual Board members is prohibited.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ Staff members may ask an individual commissioner or board member for his/her position on a matter but are prohibited from revealing those positions to other commission or board members.
- ❖ It would violate the Sunshine Law for board members to circulate written comments to other members of the board.
- ❖ Board members may not engage in an exchange or discussion on Facebook or other social media (Twitter) that may **foreseeably** come before the board for action.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ Public access to meetings is one of the key elements of the Sunshine Law and Board members are advised to avoid meetings in places not easily accessible to the public.
- ❖ The use of luncheon meetings should be avoided as these meetings tend to have a “chilling” effect upon the public’s willingness or desire to attend.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ Sunshine Law prohibits meetings at any facility which discriminates on the basis of sex, age, race, creed, color, or economic status, or which operates in a manner as to unreasonably restrict public access to such a facility.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ For meetings where a large turnout of the public is expected, Board members should take reasonable steps to ensure that the facilities where the meeting will be held will accommodate the anticipated turnout. When the largest available public meeting room cannot accommodate all of those expected to attend, the use of video technology may be appropriate, as long as an opportunity for public participation in the proceedings is provided.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ The term “open to the public” means open to all persons who choose to attend. This includes all members of the press, competitive bidders, and employees.
- ❖ Cameras and tape recorders, as long as they are not disruptive to the proceedings, should be allowed and rules or policies against them will be deemed arbitrary and invalid.

Government in the Sunshine Law

Section 286.011, Florida Statutes

- ❖ Civil penalties up to \$500 against each participating member. A knowing or intentional act is not required.
- ❖ Criminal penalties, including incarceration and fines, for any Board member who knowingly attends such a meeting or has a prohibited contact in violation of the statute.
- ❖ Any action taken at a meeting tainted by a Sunshine Law violation is void.

Additionally, a violation may require the Board members to hire private counsel either for private suits or for State Attorney actions.