Good Morning, Sunshine!

Open Meetings and Records for the Smart Commissioner

By Mark Landes
PUBLIC RECORDS: Your Duties

- Provide *prompt* inspection of public records;
- Upon request, provide copies within a *reasonable period of time*
A “PUBLIC RECORD” IS HELD BY A PUBLIC OFFICE, AND...

Stored on a fixed medium (tape, video, film, photos, etc.)

Created, received or sent under the jurisdiction of a public office; and

Documents what the office does
Public *Records* Request

vs.

Public *Information* Request
WHAT IS “PROMPT” INSPECTION?

Scenario:
At 3:00 a.m., an investigative reporter makes a public records request for the city employee roster. He insists that he needs to inspect it immediately because it’s related to a breaking story.

How do you respond?
Prompt is not necessarily immediate. The standard does contemplate for legal review where appropriate.

A public office must establish reasonable business hours for public records requests. Even though the office is open 24 hours, it need not make records available during those hours.
# EXEMPTIONS (EXAMPLES)

*Refer to Yellow Book for additional exemptions*

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<th>Mandatory Exemptions</th>
<th>Discretionary Exemptions</th>
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<td>• Physician-patient privileged records</td>
<td>• Trial Preparation Records</td>
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<td>• Student education records</td>
<td>• “Security” and “Infrastructure” records</td>
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<td>• Employees’ home addresses</td>
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DISCLOSE OR NOT TO DISCLOSE? THAT IS THE QUESTION

- If a record is clearly public with no applicable exceptions, disclose (green light).
- If a record falls squarely in a “catch-all” exception, withhold (red light).
- If a R.C. 149.43 exception could be applicable, use caution and consult your attorney (yellow light).
PRACTICAL TIPS IN RESPONDING TO PUBLIC RECORDS REQUESTS

• Promptly decide what records your office may have in responding to requests.

• Begin organizing the appropriate records with consideration of applicable exceptions.

• Follow the instructions offered by requester:
  – If they want to examine the records, contact them to arrange a time during business hours when the records are available (do not overestimate).
  – If they want copies, they will most often want an estimate of the costs—you may get $$$ first.
PRACTICAL TIPS IN RESPONDING TO PUBLIC RECORDS REQUESTS (CONT’D)

• Document their review and/or your production of records:
  – If the review is in-person, record when they came, what they looked at, who handled the request, and their satisfaction.
  – If the production is by mail, send a cover letter in accordance with the new HB 9 rules for your files.

• Timely correct any misunderstandings — do not resort to deception or destruction.
CAN THE PURPOSE OF THE REQUEST BE REQUIRED?

NO -- **UNLESS** the request is for student directory information.* Identity of the requester may also be required.

K-12 schools

Post-secondary

Student directory information may **not** be used for profit-making activity.

*NEW UNDER HB 9
A written request is **NOT REQUIRED**.

*However, a public office may **ASK** that the request be written **IF** the requester is informed that:

1) A written request is not mandatory,
2) The requester doesn’t have to identify himself, and
3) A written request will help to identify, locate, or deliver requested records.

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**Statutory damages cannot be recovered for unwritten requests.**

*NEW UNDER HB 9*
A public office may deny a request that’s ambiguous or overly broad *BUT* must first give the requester the opportunity to revise the request for clarity after “educating” the requester of how records are kept and retrieved.

An explanation of the reasons for the denial, including legal authority, is required if a request for public records is denied. And, the denial must be in writing if original request was in writing.*

*(good policy regardless)*

*NEW UNDER HB 9*
REDACTION

Obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a record.

Must be plainly visible, or advise requester.
STATUTORY DAMAGES (New Under HB 9)

- $100 for each business day (up to $1,000)
- Clock starts running the day the requester files a mandamus action.
- Available ONLY if *written request* was submitted by hand delivery or certified mail.
A government agency that unlawfully removes or destroys a public record that the agency is required to maintain is subject to a civil forfeiture of $1,000 for each violation (each document).
OPEN MEETINGS

• What is a meeting?
  – Prearranged
  – Two of you
• Includes email and text conversations
• Includes serial meetings
• Deliberation versus Fact-finding
REQUIREMENTS FOR MEETING

- Notice
- Held in public
- Record made
EXECUTIVE SESSIONS

• State reasons from list, then roll call vote.
• Record shows reason, but no minutes of executive session.
• No formal action.
• Confidential talk, but not documents.
• If action after session on topic discussed, deliberate in public first!
NEGATIVE EFFECTS OF NON-COMPLIANCE

- litigation
- statutory fines
- attorneys’ fees
- court costs
- heightened public scrutiny
- damaged public opinion about government
- press attention
- more work
THANK YOU

Commissioner John O’Grady
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